

## Kentucky Environmental Quality Commission Public Forum

### **Meeting Minutes**

February 13, 2006  
Capitol Annex Room 111  
Frankfort, Kentucky

Transcribed by Sheila Clay and Revised by staff

### **EQC Commissioners Present**

Lindell Ormsbee, Chair  
Andrew Ernest  
Laura Knoth  
Eugene Zick

### **Speakers/Representatives Present**

John Lyons, Director, Division of Air Quality  
Sean Alteri, Division of Air Quality  
Bruce Scott, Director of Waste Management  
Karen Wilson, Policy Advisor to the Secretary

### **Commissioners Absent**

Gordon Garner, Vice Chair  
Karen Deaton  
Rebecca Farris

### **Audience Speakers**

Leah MacSwords, Director of the Division of Forestry  
Bill Caylor, President of the Coal Association  
David Cooper, Kentuckians for the Commonwealth

### **EQC Staff Present**

Scott Smith, Acting Director  
Frances Kirchhoff, Executive Secretary  
Johnna McHugh, Programs Coordinator

The Environmental Quality Commission (EQC) held a public forum for the purpose of being updated on the 2006 Legislative Session. There were approximately ten present in the audience. The meeting was called to order by the Chair Lindell Ormsbee.

The first order of business was to approve the minutes for the September 29, 2005 and the December 5, 2005 meetings. Andrew Ernest made a motion to approve both sets of minutes. His motion was seconded by Gene Zick and the motion carried unanimously.

Mr. Ormsbee next introduced Mr. John Lyons, Director for the Division of Air Quality and Sean Alteri, Supervisor of the Regulation Development, with the Division of Air Quality. Mr. Lyons said that the regulation 401 KAR 65:010 is the culmination of a rather long process undertaken by the Division of Air at the bidding of the legislature under Senate Joint Resolution 3, where the Division had to submit a plan to the Environmental Protection Agency to eliminate the vehicle emissions testing program in Northern Kentucky--the counties of Boone, Kenton, and Campbell – which had been a long-standing program that had been put in place several years back to address one hour ozone non-attainment issues. That resolution required the Division of Air Quality to submit something to EPA by August of 2004. The Division of Air Quality subsequently went through a rather long process to submit something to EPA that they found approvable to eliminate that program and provide for emission reductions that would equate to what the vehicle emissions testing program was achieving. The Division of Air Quality did that and, ultimately, the EPA approved the closing of that program on November 3, 2005. The Division of Air Quality subsequently proposed to repeal the regulation so that, technically, the public would not be in violation of a state regulation when the program had ended.

Question and Answer

Lindell Ormsbee

So the rationale behind eliminating the VET was that it came from a resolution from the Senate Joint Resolution 3

John Lyons

Yes, out of the Legislature in 2004 from the Senate Joint Resolution 3

Lindell Ormsbee:

All right. So that came out of the legislature – to eliminate that, which then basically, you were mandated to do that.

John Lyons:

Yes.

Lindell Ormsbee:

And came up with a strategy that would achieve the same levels of reductions that were being achieved by the VET and then sent that to EPA. EPA looked at it and finally gave approval of that and so, at this point, you're asking for the repeal of that regulation.

John Lyons:

That's correct.

Lindell Ormsbee:

In looking at the comments back from the Statement of Considerations, at least the document we got, I noticed that Mr. FitzGerald from the Kentucky Resources Council had some comments with regard to the eight-hour implementation rule. I just wondered, if you had a few minutes, you could kind of give us your perspective on that issue and its relevance or whatever do you think the current proposal.

John Lyons:

I think Mr. Fitzgerald was concerned with the elimination of emission reductions and, not being fully compensated through these regulations, his argument was contemporaneous. He also – with a new one-hour ozone standard showing non-attainment in that area – he felt that we should keep the program in place. However, we had already achieved the one-hour ozone standard. This program is equally compensated through those other two regulations.

Lindell Ormsbee:

Any other comments?

Laura Knoth:

How are you doing with getting the various paint shops and all that on line? How are they reacting? Is it going well?

John Lyons:

Yes, Laura. It's – actually, we've had a couple of different training sessions up there for the regulated community as well. We also – the people that worked in our VET testing stations up there, who were inspectors by classification - we've moved them to our Florence regional office, and we have pretty much put them on the job as inspecting the facilities – make sure they're complying with it. I know that was another concern of Tom's – that we would make sure that these facilities were complying with the new regulations, and we have done that exclusively with those people that worked in the testing program. So, it's going well by all accounts.

Laura Knoth:

Great.

Lindell Ormsbee:

Any other comments? Do I have a motion on how you want to proceed on this?

Laura Knoth:

Move to approve.

Lindell Ormsbee:

Okay.

Andrew Ernest:

Second.

Lindell Ormsbee:

Laura has a motion to approve and that's been seconded by Andrew, so all in favor say "aye".

ALL:

Aye.

Lindell Ormsbee:

Okay. Thank you very much.

John Lyons:

Thank you.

Lindell Ormsbee:

Our next agenda item is to hear an update on the 404 Task Force. All of the Commissioners got a copy of the 404 Task Force and disc.

Scott Smith:

The disc represents all of the documentation that was presented to this task force which is probably a document about twelve to eighteen inches thick. So, there's quite a bit of information there. Where this process started was there were a number of interested parties that were just curious – I think would be the word – of why wouldn't Kentucky – or why wouldn't we be interested in taking over the 404 Program. It's currently administered by the federal government. It's one of the few programs that we don't have primacy on. It's something that impacts a broad range of people throughout the Commonwealth, whether it's – environmental groups certainly have an interest, the coal industry, the Department of Highways, the Homebuilders. I mean, there's – it impacts – or the decisions that are made regarding this program has far-reaching impacts. I think the consensus, without question, on the program is it's morphed into something that, in its current form, is – takes longer than it should, costs more than it should in terms of the way that you can pay for mitigation, and the money that goes for mitigation to take place is stalled in little pockets of – people that are holding it. The work's not getting done. I mean, there's several millions – million dollars – I mean, more than several million but millions and millions of dollars stuck in these funds to pay for mitigation that's just not being spent for a number of reasons. And, overall, I think there's just a tremendous frustration with the people that use the program regardless of what your persuasion is that the program is just not working the way it was originally intended. The Secretary of the Cabinet, LaJuana Wilcher, probably knows more about this program than anybody I've ever met and was interested in seeing – taking a look at should we take this program. And as a result of the interest from a wide variety of stakeholders – LaJuana's background – she organized a group of people, again, a very broad brush group that represented everything from environmental groups, industry people, government people, experts in the area of 404, and commenced in early summer to begin a process – may

have even been the spring – methodically go through this program and then determine whether we felt there was an opportunity for us to take it over. The culmination of the committee’s work – or the work force’s – or work group’s work is there in front of you. We were required, through some legislation that was passed in the last general assembly, to explore this and to prepare a report to the legislature and that was due December 31<sup>st</sup>, and we complied with that request and gave them the same information that you’ve got in front of you. The bottom line of all this is that I think there’s some opportunity with this concern – I think overall has to do with staffing – has to do with the cost of the overall program. This, as well as other matters, are part of our legislative package. And at this particular point in time, I think the steps that would take place would be – we’ve completed the work of the work group. The next step would be to see what type of funding we get because, in order to take this program – I mean, you just can’t take it. The EPA is very – there’s only two states that have this program right now, New Jersey and Michigan. And EPA – there’s no money that comes with this from the Federal government. So you, basically, have to take – your funding source has to be sustainable. EPA has to approve, not only the regulatory package that would be necessary to implement the program, but also would approve your financing and that there was money there to run it. So, sequentially, the way we see it is that the first step is to see if the funding is going to be there, which would mean the staffing would be there. Once we get our signal from the legislature on budget, then we would commence to put together the regulations that would be necessary to move this forward. All interest groups would be involved in this. I don’t anticipate a huge work group effort, but we would certainly – as we develop these regulations – would have input from a wide array of interests in this matter and then, you know, once the program was – the regulatory package was approved then – we would then take a look at getting EPA involved to see if – I mean, we’d have them involved all the way through - they were also represented on this task force to see what – we would begin to work on the overall implementation, in taking the program. But, in our view, it’s a very sequential matter of fact method that you’re going to have to use to do this because it doesn’t make sense for us to expend time and resources at this point to be writing regulations until we know that we’ve got a program that’s fully funded, and once we know that we’ve got funding, then we would begin to put the regulatory program together.

Lindell Ormsbee:

Does this have to have any type of statute to authorize the subsequent regulations or – how does that work?

Scott Smith:

At this point, we think what was passed during the last session is adequate to give us the ability to move forward. In terms of approvals we would have to get out a regulation package - we would need to go through the standard public notice, public comment response to Statement of Consideration and through the two legislative committees to get there, but it doesn’t appear at this point that we need any additional legislation.

Gene Zick

What kind of confidence level do you have of relatively getting money to support this?

Scott Smith:

I'm not sure at this point. When you're dealing with the legislative process, it's uncertain. If they feel like we can obtain the funding then we're ready to move forward.

Gene Zick

We're having a difficulty with the permitting process now and now you're taking on another permitting process.

Scott Smith:

Yes. I think that that's – the key to this is to have the staffing and to emulate – we've got some consolidations of existing resources we can bring to bear with this program plus the additional staffing that would be necessary would probably help improve a number of those permitting areas that are, maybe, running slow. So, we see a – there's a certain amount of synergy that would happen with the acceptance of this, you know, if we could get the funding necessary for this program.

Lindell Ormsbee:

Do you have an estimate – a ballpark estimate of how much money this would take to run based as it currently is envisioned as a result of the Task Force report?

Scott Smith:

I'm – right off the top of my head, I can't recall. I know there was a number of personnel that were requested, as well as – the way it is set up now, I think there are some other funding sources, but the total dollars, I'm not – I just can't recall at this point in time –

Gene Zick

Over a million dollars a year?

Scott Smith:

Yeah.

Lindell Ormsbee:

I'm curious. How did New Jersey and Michigan basically handle the assimilation of the this program, as far as finances or –

Scott Smith:

What they did is – I've had two conversations, both with Michigan, but what they did is they followed pretty much the same pattern that we have in that you plan for this thing and then determine the resources available and then work your way through it. I think there's no question that you've got to have a very good working relationship with the EPA region that you're dealing with so that, as issues present themselves – I mean, you're trying to minimize these occurrences on the front end – but you can get your program approved and keep it on track. EPA does come back in and reassess where you are with your program from – on a regular basis and, you know, you just have to keep your funding needs for this program. You just have to keep your eyes open and where additional funding may be required – hopefully it's not – but, if it is necessary then you would certainly, at the appropriate times, make those funds requests in your budget requests. But your first step is just seeing what should this program – would look like and we're really a ways away. You'll see by that document – we've got a good sense of what's necessary, but you never know until you actually work your way through this thing and work through the regulations and make sure that you understand what you need and then, again, if it appears that more resources are necessary than what we've budgeted for, then I don't think the

Governor would want to take on a program that would not be responsive, and I don't think EPA would want a state to take a program like that. So, there are a number of checks and balances as you move through this thing that it doesn't – the process doesn't allow you to rush to, in acceptance of this. But there are a number of programs that EPA has that we're taking a look at but – to see if we want to take those because you're always better off as a state having these as long as you've got the resources to perform the work.

Lindell Ormsbee:

Any other questions from the Commissioners?

Laura Knoth:

Scott, so many of the Cabinets took budget cuts with this budget. Was there an increase over the baseline for EPPC that would be – that you could use for this program in the proposed budget?

Scott Smith:

There was money set aside in this program. You just have to see how it matriculates through the process. I think there was some money that came from other sources that they put in here but – and I'm really not that familiar with the final outcome of the budget to be able to be very specific about where this money came from or where it's going to go, but if we want to take this program, then it's incumbent upon everybody to work together to try to get the funding to do this.

Laura Knoth:

What kind of reaction did you get from the budget review subcommittees? Wasn't this presented or was it just general budget?

Scott Smith:

LaJuana, Secretary Wilcher presented that. I wasn't there. I think we came away from that with a reasonably hopeful expectation that our entire budget would – I think they were – but I think the meeting certainly was global in nature and the specifics of what was discussed that I'm – I just don't know.

Laura Knoth:

So, this wasn't line itemed anywhere?

Scott Smith:

I'm not sure how it came out in the final budget.

Laura Knoth:

I didn't remember seeing it when I scanned it. That's why I was just curious.

Scott Smith:

Well, I think it came out and there was certain chunks in it but – yeah, I don't think it was a line item in the budget. I think it was handled with some existing funding in personnel that would fall under those general groups of money.

Lindell Ormsbee:

So what explicitly then is the next step and what's the timetable?

Scott Smith:

I think the next step is to see how this comes through the budget process, and if the funding is there, fine. If not, then I think that there's several things we learned as a result of this that can certainly help streamline – I mean, this was not just take a look at this program. Because, once you start peeling back the onion, so to speak, you begin to see opportunities there so that if it stays the way it is, we can certainly – it helps us to streamline our

program, our approval process, and it shed a lot of light on some of these other problem areas that – in terms of getting funding out of these pots – for lack of a better term – these agencies – or not agencies but these – where the Corps – the Corps has three places that this money – what we call “in lieu of fees”. In other words, if you’re not going to do the restoration yourself, then you can pay money into an in lieu of fund. One is at MSD. One is Kentucky Fish and Wildlife. Another one is up in Northern Kentucky, I believe, at the Chase Law School. And these three – each of these pots of money has kind of a management board, or an oversight board, that’s got a broad base of representation including a Corps of Engineers and so forth and so on. I’m not sure what the exact – I’m more familiar with the Fish and Wildlife fund here and who is on it. We’ve got a representative. The Corps has got representation. Fish and Wildlife has got representation on that one. But I just – I think one of the things I got is a sense of frustration on the fact that we’re not getting this money out in a way – in other words, you could have a project moving forward but the money to fix the issue is slow to get implemented.

Lindell Ormsbee:

Do you know what the total amount of money in all three funds is?

Scott Smith:

I used to. I got interested in this almost a year ago – that the Department of Highways was putting in almost a million – it looked like a million dollars a project. So, you’re talking substantial – and I think a number of the coal companies were putting in a million or close to a million dollars a project. So you’ve got considerable money going into these funds, and I think it just makes sense that this money needs to be moved out and to get into addressing this particular issue. This is just a personal angst with me in terms of looking at it. I think the Corps of Engineers has changed their guidelines on how this money can be used. For example, portions of these funds can be used for sewage plants and things like that. This is a recent change. There are other areas that it can be used for and they’re trying to, they don’t want entire sewage projects in these areas to be funded with this money, but the way I interpret what they are saying – what is there is that there’s seed money possibly available there because you’ve got lots of straight pipes in these areas and you may be able to get a bigger – at least get a bang for your buck if you’re looking at water quality. Although, that’s not what the program was originally designed to do and there’s, theoretically, other federal and state programs that could be used specifically for that, and that’s the reason they didn’t want to dedicate a lot of money into those programs. But, at least the way I interpret that guidance document, there’s some alternative and flexibility that can be used in how these funds are utilized.

Lindell Ormsbee:

Is this in any way related to the 531 Program that Hal Rogers set up with the Corps for his district?

Scott Smith:

No. It can be used in concert with it, I would think.

Lindell Ormsbee:

So they’re not using this to fund the 531 Program?

Scott Smith:

No. No. That's not – it's fairly independent and specific into in lieu of for wetland restoration, stream restoration, and things like that.

Lindell Ormsbee:

So, if the state took primacy of the program, would they have control over these funds or would the Corps still basically –

Scott Smith:

No, we would have responsibility for these funds, and I think that's another reason why it makes a lot of sense to get – I mean, we would, I think, be able to get these projects moving, one would hope, faster than they have.

Lindell Ormsbee:

Is there any way to use some of those funds to administer the program?

Scott Smith:

No.

Andrew Ernest:

Take a look at the conclusions of the Task Force – it looks like the prime benefit for assumption of the 404 Program is streamlining the permit application review and possibly the enforcement process. Was it within the scope of the task force's purview to look at whether or not that was worth a million dollars a year in terms of benefit to the Commonwealth?

Scott Smith:

We didn't perform a cost benefit analysis. This – I think the purview of the work group was to take a look at what the program – I mean, to just understand the complexity of the program and how big the program is, and then to figure out how we might implement it, and I would think that, certainly, some type of cost benefit analysis – I think you've got some legislation right now that's necessary, when these regulations go into affect, to determine what that might be. I mean, we typically would do something along those lines anyway moving forward because that's something we work with the small business task force with right now on regulations.

Andrew Ernest:

I'm curious, was anybody from Michigan or New Jersey involved in the –

Scott Smith:

Yes, they were – I think you had at least one or two teleconferences during the process so that they could explain some of the – what they view as advantages to taking the program and also talk about problems that they had in the implementation.

Lindell Ormsbee:

I'm curious. Did you get any feedback whether they would do it again if they had a chance?

Scott Smith:

I think that both states think – they like what this thing has developed into. But those are mature programs. There's been a number of states that – Florida, I think, is one – that did what we're doing and I think Oregon is currently evaluating the possibility. But where you've got – there's a number of states that have gotten close but then just decided they either couldn't do it or didn't want to do it. It's a big program and I think some of the things we learned – one is how to streamline our existing program, but there are other opportunities available as well working through the Corps to take portions of the program or whatnot that we can work through. So I



don't think there was any time wasted in terms of what we learned from this process.

Laura Knoth:

I can say and one of my other members of the Task Force, Mayor Cartmell, maybe – would probably agree – it was an eye-opening experience. I mean, it's an amazing process and you did see there are opportunities for streamlining both our process and working with the Corps of Engineers. And then you also learned of the – you know, we saw projects. You know, we actually went out on sites and saw the projects and, you know, the experts do exist out there who are doing some amazing work on this issue and then department is following up with checking those and making sure they're doing what they're supposed to be doing even after they're built. And, you know, the 401 process – you saw opportunities where we can streamline our part of it and, whether or not it would be beneficial, you know, we heard from so many folks who just talked about some of the nightmares of how long it takes to get a permit and how ridiculous some of the things seem to be to them. You know, I felt like our time was well spent if we can improve on that process in any way. And the whole mitigation process. Huge opportunities there, I thought. I felt the same way. When you saw that – I mean, at one point I know – Fish and Wildlife's presentation – they had eighteen million dollars sitting in a mitigation bank and they had a lot of projects committed but had not been spent, and I think there was some frustration there that I think this process brought to light and could address. I mean, they can literally go in and do some amazing projects with that money and we saw one of those or two of those. I think coordinated efforts at this point through these folks let the Corps see that Kentucky is willing to work with them. I know we've got four Corps districts and we dealt only with the Louisville Corps, but I think that can – I'm sure that that could be spread. It sounded like they would be willing to help us do that if we created a more working relationship with them.

Scott Smith:

I think there's no question about it. We learned a lot, and I don't want to speak for the Corps, but I would think they learned a lot too in terms of where our friction points are with the process and I think that what they're looking at is a more coordinated view, because you've got some companies that are dealing with the Huntington Corps and then they've got to turn around in another part of the state and deal with the Louisville Corps and then, in another part of the state, Nashville, and I think in far western, possibly Memphis, and that's frustrating because you've got – everybody is supposed to be doing the same thing, and you're getting a little – well, in some cases, a substantially different approach to how to get these issues addressed and, well, just delineation of wetlands. There are different approaches. But I think the Corps has seen – gained from, not only this process, but other input that they've received from other parties in the overall process, and they're certainly going through and trying to consolidate how many masters – one master, so to speak, out of Louisville. And I think, if nothing else comes of it, there's going to be – we've at least established good lines of communication between the affected parties, the state of Kentucky, and the federal government. I think that those lines of communications are wide open and those – I don't see any impediments, quite frankly, to doing things better and improving the process. I think it's

just a matter of somebody taking the leadership role in this and keep continuing to move the ball forward, because I think it does have a tremendous impact on our state, on our waters and, the fact that we can do it better than it's currently being done I think is encouraging, to me, to say there's opportunity there to really make some improvements.

Andrew Ernest:

Okay. With the states that did assume the program – I guess Michigan and New Jersey – do you know what the level of Federal review reverts to for them? Or, I mean, at what –

Scott Smith:

Once the state makes – and I believe I'm correct on this – once the state renders a decision then – just like the Corps of Engineers right now – before they render a final decision, it goes to EPA's regional office and, depending on the type of project, they have to – they also approve it. So you would still have EPA, to a certain extent, involved in certain types of projects. Now, all of that is worked out through a series of Memorandums of Understanding before you would take the program to say what issues would they become involved in.? How long would it take them to make a decision? What would a decision matrix look like? That's a totally separate part and parcel to the regulatory process, and then you've got to have these agreements between EPA and the state that would come into play. You know, that would be an interesting process to watch.

Laura Knoth:

Well, beyond that there were agreements with the Department of Agriculture and the Natural Resources Conservation Service, which, you know, does so much of this role for the agriculture community. I applaud the Cabinet for the effort here. I think it was worth it to look at a regulatory program that has such an impact on this state, both from the regulative and from the environment, and I know it would be a very difficult process as we move forward to determine whether or not it's something the Cabinet can take on and have the ability to take on and improve it and be able to fund it. And that will be crucial to making it a better process – is, if you've got the funding and the people and the experts because the people who came and presented in front of us were experts on these issues and those folks are going to be difficult to get and keep and create a program and the department.

Scott Smith:

I agree.

Laura Knoth:

And it's a huge involved process to change this from a Federal program to a state.

Scott Smith:

There are a lot of things we could try to do. There are programs available. We can borrow federal employees. I can't remember what they call that, but there's a bureaucratic term for it. Basically, we can pick up federal employees on loan, if necessary. But I think the first task is to see if the funding is available on a continual basis to make this happen.

Lindell Ormsbee:

So, do you expect some specific action on the legislature of this session to identify those funds or –

Scott Smith:

We'll see what we're trying to do. It's just where is the money across state government or, even in our cabinet, best spent. That's a decision to make. That's their responsibility. And if they see fit to give us the money to take the program then we'll run it, and if they don't, we'll continue forward and see how we can take what we've learned on this and see if there's other opportunities that present themselves here to make these things more effective and efficient as we move forward.

Lindell Ormsbee:

But, at this point, it was not specifically put in the budget. Is that you're understanding?

Scott Smith:

I think the staffing was in there and the – but I don't know how it presents itself in the budget.

Lindell Ormsbee:

Okay.

Laura Knoth:

Scott's right. This is one of those things – it'll get down to the last couple weeks of the session before we know how that turns out on the budget side. And, also I think it's gotten to where more of – I noticed in this budget, this governor did not do program line items like has always been done in the past and it was more of a "the cabinet will get this amount and then they'll decide within that how that's done".

Scott Smith:

That's right.

Laura Knoth:

And so you probably won't see a line item on this and the Cabinet will have to make some real tough decisions on whether or not to – Air, Waterways – you've got them all over there and how you divide that up will be up to the Secretary ultimately.

Lindell Ormsbee:

So, ultimately, it could come down to – after the budget is passed – that the cabinet will have to sit down and make a determination of whether or not they have sufficient funds to move forward with this program.

Scott Smith:

It just depends on what we get and how we would look at it. I mean, at this point, in the budget process, you can do just about anything you want to do but, at the end of the day, it's the decision has to be made to either line item the money for this and see if it's got to be perpetuating in a way that you can demonstrate to the EPA that it's a perpetual source of funding.

Lindell Ormsbee:

I would assume there would be some startup funds as well to get –

Scott Smith:

Yeah. There's some grant money available and we've applied for and do have – have received a grant for the –

Scott Smith:

The funding for this process has come from is an EPA grant to take a look at this and to get some expertise in to follow up on what we've found.

Lindell Ormsbee:

Okay. Well, that's been very informative. We appreciate you giving us that update. Any other questions from the Commissioners?

Scott Smith:

I think it's something that we keep on the agenda periodically throughout the year just to find out where this is because it is important.

Lindell Ormsbee:

Thank you, Scott.

Let's see, our next item on our agenda was a consideration of a potential resolution related to mountaintop removal. Again, a little background: If you recall, we held a daylong session here, in Frankfort, back in September and addressed the issue of mountaintop removal mining. We had quite a few speakers that came forward and provided testimony and then, subsequent to that, we had an evening forum that was co-sponsored with the 404 Task Force down at Prestonsburg and heard testimony from various citizens down there. One of the things we committed to the citizens down there was that we would go back and evaluate their comments and come forth with some type of summary document or resolution at our annual planning meeting. I think Betsy Bennett crafted a resolution that we discussed and tabled for subsequent work. I think, at that point, Dr. Ernest volunteered to go back and work on that and we got a subsequent revision of that distributed to the commissioners. Then, I think that document was not explicitly set up in a resolution form, and Scott, acting as the Executive Director, took a crack at trying to put that into somewhat of a resolution form and made some edits. And I think you all received that – maybe Friday? So we haven't had a chance to look at that in detail. I know some of you all have at least read it. At this point, since, Ernest, you kind of took the lead on that, I guess I'd ask for you to speak to that.

Andrew Ernest:

Well, there's a little bit of a change from the version – from the content that I circulated to the last version that we've gotten. My concern is that the resolution in its current format is somewhat watered down from, I think, what was originally intended. I really haven't had enough time to kind of review the current version in detail to be able to make a recommendation one way or another. So my preference would be to not act on the current resolution.

Lindell Ormsbee:

Okay. Okay. Is that the consensus?

All right. It sounds like, at this point, there is a consensus to hold off on actually acting on this resolution until we have time probably to go back and re-work that a little bit, and I guess since you kind of took the lead on that Ernest, I would suggest, if you are amenable to that, to work with that with Scott or staff to try to get that into a format that would basically be in line with the resolution in lieu that we originally started with. Are you okay with that?

Andrew Ernest:

Yes, yes.

Lindell Ormsbee:

Anyone else have any comments on that?

Laura Knoth:

I would think we'd – we have one in front of us. I think we just want to review this. I mean, we've got new members and a bunch of folks who haven't reviewed this. In addition to that, the General Assembly is going

through a lot of legislative changes right now, too – the whole industry. I mean, this –

Lindell Ormsbee:

That was just in the paper today, I think. Yeah, we've seen a lot of articles in the last couple of weeks, I know, addressing this issue. One that I noticed in particular was that there is some type of potential legislation, I think in – I that in the Natural Resources Committee? I'm trying to remember. I think – yeah – the House Natural Resources Environment Committee. Apparently, it looks like there's some type of bill that's being held up and, at this point, I don't think – it looks like that's going to come out of Committee. At least, that's the way the article was. So that may be another issue that might play into our subsequent discussion as well, so –

Laura Knoth:

I think we would just give everybody the opportunity to just review what we have in front of us.

Lindell Ormsbee:

Well, I think relative to our agenda, we have a little bit of time. We do have a few people here with us that might have a few comments and I certainly would be willing to solicit those, if that's okay. That might help us in finalizing the drafting of this document. So, if there's anyone from the public that would like to take a few minutes to speak to this issue, we'd certainly entertain any of those comments.

Bill Caylor:

Am I considered the public?

Yeah, I'm secondary public I'm afraid. Chairman, thank you. I'd like to comment on the – I had a chance to look through this while you all were reviewing the 404 – and we're for the 404 program as well. We'd like to see some improvements in the agencies to recognize that surface mining – we don't need to have two agencies within the same cabinet review the permits, you know, they could streamline that. But we think that 404 Program's got a lot of merit in it. So, just as a side note.

Mountaintop removal, as stated, is a very contentious issue. A lot of time, the contentious nature of it is promoted by people that really live outside the coalfields. There's – but I'm not discounting people in the coalfields that do have problems with it, but mountaintop removal – what the public always sees in active mining. You know, if you see an active subdivision being constructed, you don't see what looks like after it's finished or after it's matured for ten or fifteen, twenty years. We always – or the public's always shown active mining, and it looks like a lunar landscape. There's no question about it. It looks rough. But, you know, what they don't show is, you know, what it looks like after it's reclaimed. And, because of that, the press has led the public to believe that this is the way it will always look like, and it doesn't. A very small percentage of East Kentucky will ever be – has been, is being, or ever will be impacted by mountaintop mining. Only seven – less than seven percent – and people don't realize that. And what is developed – when a coal company goes to a landowner and tells them we're going to mine their land, the first thing they ask is that “will you leave me some level land”. It's not the coal industry trying to leave all this level land. It's the people that actually own the property wants it. And that seems to be, you know, people want to – the flatlands want to tell people in East

Kentucky what to do with their own property and it's very frustrating. We're in the middle. You know, we can put it back to AOC [approximate original contour]. We can pile it back on, but anytime when you do that, you have the swell factor – you've got to dispose of the excess rock and dirt somewhere and we put it in what's called valley fills, into fills. We pay the landowner quite a bit for the use of his land, even if he doesn't own the mineral. If he is lucky enough to own the mineral, he gets, you know, quite a bit of money for it. But, if he just owns the surface, we'll take surface that may be appraised for three or four hundred dollars an acre – we'll give the surface owner thirty-five hundred to four thousand an acre for the use of his land. Now, this will last – the use will last – I'm going to guess somewhere between five and seven years – but we'll take land that was steep and inaccessible that's good for growing trees and we'll leave him with level land on the top, a wide access road to get up to the top and ponds if he wants it. So we can dramatically increase the value of this property if people will work with the industry while we're actually mining. It can be a win-win for the long-term sustainability of East Kentucky. There's cattle farming, schools, industrial parks, where they put prisons, subdivisions, airports, golf courses – on and on – the uses that can be made for this land, especially the land that's closer to the cities. Now the land that is farther away from the local citizens – the local communities – may not have the immediate development potential, but it will in the long-term – over the next fifty to one hundred years, and people need to have a longer vision of what can be used for this land.

On the particular resolution, the first set of bullets, I think, are a pretty good summary of what should be the expression for the industry to expand its knowledge on mountaintop mining – there's nothing wrong with that.

Continue to minimize the size and adverse impacts – we do that today. We try to minimize these.

Improve long-term planning to improve the sequential mining of areas. We try to do that. A lot of times, we're frustrated by the fact that we've got to put out in a permit way in advance what we're going to do, and to do that, we have to, a lot of times, overkill. We have to plan for a little bit bigger fill because you don't really know what you're going to get into. And then it causes a problem. If we could easily go back in and modify a permit, we could do a better job up front. But we're forced by the very nature of the permitting to, a lot of times, overdo what we have to permit, and then, when we actually do it, we do maybe seventy-five or eighty percent of the fill, but it's very frustrating on behalf of this industry.

Maintaining improved water quality where possible. You know, that's doable.

Improve lines of communication to the local communities. I personally think that's a key thing that we've failed to do, and I think that's an excellent recommendation. I think we need to communicate more with the community prior to mining. Inform them of what we're doing and the sequence of things we're doing and work with them on seeing what we can do with the community to improve the relations between the coal industry.

Improve the reclamation techniques. On the loss of soil, I think that ought to be encourage soil formation. There's not a lot of topsoil when you get to East Kentucky on the size of the – you know, the steep hillsides. There's a

lot that we can do to encourage soil formation. Where you have the freeze-thaw cycle coupled with the decay of natural vegetation, we can create topsoil where very little was there originally. Encourage the landowners to support a post-mining land use of woodlands and forest. I think that's a very important feature. We can get them back to the reforestation. We can leave them with a way that they can grow trees that will support themselves and their children in the long term. This reforestation is something that's supported by both the environmental community and the coal industry and we're very excited about. But the next step is the education of the landowners themselves on that.

When you get into the bullets one, two, and three – my read on this is that it's creating a lot of work – you know, there are a lot of studies that have already been done. Some of this is questionable. The third bullet under one – the data requirements and utilization of information obtained and the probable hydrological consequences.

We've been struggling with that term for years. I think we do a good job. We submit a lot of data. I think it is utilized. This is like wrestling Jell-o on this one – in my opinion. That's – we object to that.

The second to the last bullet on that first – the buffer zone rule – most people don't realize, the buffer zone rule was implemented over twenty years ago. And, over twenty years ago, we were only dealing with perennial streams. The definition of what is a stream has changed over the last twenty years. It used to be what – you know, these dry ditches that are the upper ends of the intermittent streams and constitute ephemeral streams, they weren't regulated. We didn't do anything at all. This stream buffer zone rule – at the time it was implemented, applied to the downstream reaches of intermittent streams and perennial streams. People don't realize – and then through law changes, changes in policy, litigation – the definition stream has changed to where now any ditch is considered a stream. We joke about it and complain that anytime any two drops of water comes together, there's a stream. You know, we kid about that, but there's a lot of truth in that. And it impacts more than just the coal industry. This change in definition has impacted farmers, highway construction, real estate development – and it's a real serious issue. We need some clarification of what a stream is nationally on this issue.

So there's a lot of misunderstanding about the stream buffer zone because they're applying today, and they're not applying it like it was intended to be applied twenty years ago. And it just – we object to that because, you know, it has no – well, we could give you a paper on this to further explain what the stream buffer zone is and it really has no place in this.

Andrew Ernest:

So you would rather not find out what? The wording of this is the Department of Natural Resources provided a report for the Commission including how the stream buffer zone was being implemented.

Bill Caylor:

They have consistently had exemptions or exceptions to the stream buffer zone and, even more so under the Clinton administration and the Bush administration, the exception was the rule. So OSM finally said, "Guys, we need to redo this to reflect what the original intent was," because we're always granting exceptions to the stream buffer zone rule and we're doing it because – well, we've always done it and so it makes no sense. Let's redo

this rule. And when they re-proposed this rule, the Environmental Committee went berserk because they're saying we're allowing companies to fill in streams. Well, the original rule, these weren't streams. They were not streams. This original rule was not based on the law. It was just sort of created, you know, through a regulatory fiat. But it was created to apply really to perennial streams and not the intermittent streams that we routinely see – that we routinely fill in.

Lindell Ormsbee:

Well, Mr. Caylor I think to the point of Dr. Earnest's question, this part of the resolution was simply requesting the Natural Resources Department to provide information on how they're implementing that. So I don't see how that would somehow be an imposition on the coal industry. If anything else, it might help to clarify what they're doing.

Bill Caylor:

It's not an imposition but you're going to see the exception is the norm. And OSM, on the federal level, is trying to redo that regulation. So, it's going to be – I don't see the relevance of it, but if you're trying to show that every ephemeral stream is filled in and the fact that it's a stream and there's a stream buffer zone requirement that you maintain a buffer zone on streams – you're going to show that the exception – we're filling these in on a regular basis. You've got to go back twenty years and -

Laura Knoth:

They're being distorted in the report?

Bill Caylor:

Pardon?

Laura Knoth:

They're being distorted in reports.

Bill Caylor:

It absolutely would be.

Laura Knoth:

Is that what you're saying, then, that it would not be accurate information because of all the various changes going to it, right?

Bill Caylor:

Yeah. The post mining land use regulations are being administered to assure that changes in land uses are appropriate and feasible. We have a law that sets out what the – the land uses that a landowner can choose and whether these are deemed appropriate and feasible by who – the best land use that we ought to implement is fish and wildlife on these, and yet the environmental community threatened to sue. We were doing that at one time and they took that away from us. Tom FitzGerald threatened to sue because it wasn't on the list of the four or five listed post-mining land uses. So back under, when Dave Rosenbaum was Commissioner, we used to routinely reclaim this as fish and wildlife as a post-mining land use habitat, and we were threatened with a lawsuit by the environmental community.

Laura Knoth:

Is that back on board though?

Bill Caylor:

No, it's not. There are efforts –

Laura Knoth :

Even with recent litigation at Fish and Wildlife, it's not an allowable use?



Bill Caylor:

No, it is not. Not for Mountaintop removal. It absolutely is not.

Lindell Ormsbee:

Was that because there was a perception that –

Bill Caylor:

No, it just wasn't a listed – it was not one of the five post mining land uses set out by statute.

Lindell Ormsbee:

Well, was there concern that somehow that designation might be used as a way just to basically leave the land as is and claim “well, this is for Fish and Wildlife and we're not really going to do anything but leave it” –

Bill Caylor:

No, it was – I think it was not statutorily permissible to do it and that was the reason.

Lindell Ormsbee:

Well, I suspect there was a reason – I mean, that might be the argument for why ,but it just – it would strike me as –

Bill Caylor:

I'll tell you – I've been around for a long time and that was not the reason. It was not. It was not statutorily allowable. We were breaking the law. And I think Mr. FitzGerald was absolutely correct, and we stopped doing it. We stopped doing it. I don't think there's any other reason. I'll stand corrected – we can ask Fitz if there was other reasons, but it was absolutely not one of the four or five listed by statute.

Getting into – into item two, into the conductivity and dissolved solids. You're focusing on coal. You're not focusing on any other business or entity in this date, you know, whether it be real estate or highway construction. Anytime you take rock and dirt and dig it and place it on the ground and you have water that filtrates through there, you're going to have an increase in your dissolved solids because it's going to leach out dissolved solids. You look over a period of time, you'll see a high – that curve will come down over a period of time. But we will see an impact on the conductivity and dissolved solids but there are no water quality standards for this. So, why are focusing on just the coal industry on this and not the highways, real estate development, or even farming? You know, when you have farming, you have – when you impact the soil, you have rainwater that will leach through and pick up dissolved solids.

Lindell Ormsbee:

Well, I think I can answer why we're focusing just on the coal industry because, in this particular case, that's the basic issue that we're looking at. It doesn't preclude for looking at construction or –

Bill Caylor:

It may be, but it's not a water quality standard at this point. You know, treat us fairly. Treat us like everybody else. You know, just don't single this industry out.

Andrew Ernest:

Well, that's something that – Bill, if you're going to argue that post – the list of appropriate mining land use is inadequate; with the converse argument is that possibly because the water quality standards do not include conductivities – also an indication of the inadequacy of the standards themselves? You can't have your cake and eat it.

Bill Caylor:

Well, first of all, I don't think the post mining land uses are inadequate. You know, there's hay land, pasture land, industrial, residential – there are several of the current that are appropriate and can be implemented and this does not impact them whatsoever.

Andrew Ernest:

Are you concerned about the last bullet on the first –

Bill Caylor:

Oh, the way it was said – that it implies that the changes in the land use are appropriate and feasible. If you have four or five items to choose from on a post mining land use, are you going to have somebody try to tell you what may be appropriate and what may be feasible? If the landowner wants this – if the landowner says, "I want to have a residential development, but I want it in thirty years," should the agency say, "No, that's not appropriate and feasible".

Andrew Ernest:

Well, that's what I'm saying – is that, if you feel that is not an appropriate requirement, then the same thing can be said for conductivity as being a standard that should be required but is not.

Bill Caylor:

Well, it may be. It may be a water quality standard that we ought to look at across the board statewide. But should you single out an industry when a lot of other industries and business are guilty of the same water quality standard violation? I think you ought to look at it -

Andrew Ernest:

This resolution as it pertains to –

Bill Caylor:

Mountaintop mining only and not the other aspects of coal mining, which – no matter what you do in coal mining, whether it's surface or underground, you're going to have – you're going to create some excess material that you have to put somewhere. Even an underground mine, when they bring – when they deep mine, they have – they take the ceiling and they take the floor and there's a lot of parting so you have a lot of excess material that has to be disposed somewhere. So that's disposed of and you'll have the same – when water leaches through that, you will have higher conductivity and dissolved solids. So, no matter what kind of mining operations you have, you're going to have this. You know, you don't need to limit it to just mountaintop mining. And my argument is that you should not limit it just to the coal industry. If you're going to address this, take it across the board.

Under the item three of the U.S. Department of Surface Mining, again, it talks about in the first bullet – the second half of that sentence – sequencing of mined plans so that permitted fields must be completed before new fields are allowed to be constructed.

That's one of our big problems. If they allowed us to modify quickly – you know, these fields, you know, we could do that. We could tighten up on what we project and be more accurate. But, when you're trying to plan, it's very difficult to determine the amount of swell – how much material you're going to need – how much fill space you're going to need. We have to – just by the nature of the beast, we have to design for more than we probably will use just because we cannot afford to be caught short. If we're caught short, we're shut down. It takes over a year to get a permit – well over a

year. And, if you're going up close to the end, and you're running out of fill space, you literally will shut down a multi-million dollar operation. So that's why we try to overdo it. So the sequencing is going to be very difficult. If the agency would give us more flexibility and quicker revisions, we could do this. But that's not – currently, that's not the way it is.

Lindell Ormsbee:

Quicker permit revisions, you mean?

Bill Caylor:

I'm sorry?

Lindell Ormsbee:

If they could streamline the process of the permit revision?

Bill Caylor:

Correct. And we could design up front a much tighter fill if we knew we had the flexibility – if we didn't quite have enough and we needed another ten, fifteen, or twenty percent – that we could go and get a revision on an expedited basis. We cannot do that and it's very frustrating.

Lindell Ormsbee:

So, you're arguing that, if you had that ability, that would give you greater flexibility to potentially decrease the amount of fills that are actually built; is that correct?

Bill Caylor:

Absolutely.

Andrew Ernest:

Do you have a feel for how much excess capacity is needed right now under the current permitting structure?

Bill Caylor:

You mean how much we over permit?

Andrew Ernest:

Yes.

Bill Caylor:

No – no, I don't. I would say we over permit twenty to thirty percent. It's hard to say. It's up to the individual mining company – what the individual engineer there feels comfortable with, what his fears are, you know, how conservative he wants to be.

Andrew Ernest:

And that percentage of overcapacity is tied to the timing of the permit –

Bill Caylor:

Absolutely – tied to the ability to timely get a permit. You have to get – not just the permit through Surface Mining here, in Frankfort, but you also have to get a permit through the Corps of Engineers. So, if we had this 404 process, that may be one big step in trying to shorten that permit –

Andrew Ernest:

So, technically, we could, if we got a commitment from the Office of Surface Mining on turnaround time for permit revisions, we could tie that to an allowable excess capacity for a mining operation –

Bill Caylor:

Yes, we could as a short answer. But the problem is, if it's not a very minor field revision, we have to go through a public hearing. Anytime you do a public hearing, you've got to post it in the newspapers and have the hearing, and that will drag thirty plus days. So it's not as simple as we'd like to make and, believe us, we'd like to make it that simple.

Lindell Ormsbee:

Well, but presumably – I mean, you’re running the facility, you would think be able to do a projection at least a couple of months out, couldn’t you? And say, “We’re going to need more space or we need to go ahead and start the process.”

Bill Caylor:

Good point. Good point. You would think we could. Good point.

Scott Smith:

I think what you need, though, is a process that they’re comfortable with that could react in sixty days or ninety days, and I think that’s one of the things in some of the material that I’ve seen that we’ve generated is there needs to be a better understanding both from OSM on the Federal level in terms of what – how much flexibility they would allow in a number of areas in the mining industry. The flexibility and then what we, as a state, could roll into our program, and I think that’s a piece that when I saw some of the information coming through that when we were saying develop policy – I think what this board needs to understand is how much flexibility do we have as a state to have that – to be able to implement that policy. So, I think it may be a good idea to get OSM back over here with Susan to find out – to address, not only this, but some other concerns that I think you all have raised.

Lindell Ormsbee:

Well, it seems to me, you know, just hypothetically, if you had a company that – I assume if you can sequence these, you all can ultimately save money, potentially. And, instead of over designing these things –

Bill Caylor:

I don’t know if it would be saving money. We’re still going to do the same thing. It would be the illusion of having a permit for this much area when you only this much area for a fill. You know, you do the fill and it keeps progressing down the hollow. We only use seventy-five percent of the fill and it gives the illusion that, you know, that it’s incompetent. You know, we shouldn’t be doing that. We should be designing better. We can but we’ve got to over design just to ensure that we’ve got it because we don’t have enough time. If we get up close to – if we design the fill for what it ought to be, we would need the ability to come in and quickly amend it if we were going to go over that due to unexpected circumstances and swell. Even –

Laura Knoth:

That’s where the cost comes in.

Bill Caylor:

Yeah. That’s where the cost comes in.

Scott Smith:

Even under – I mean, if I remember Susan’s presentation before us back in the summer, even with this overcapacity design that they’ve got to do now, the volume of fills and the amount of land that they’re taking up today is much lower than it was ten years ago – five years ago.

Bill Caylor:

Yeah. We are putting our fills up closer to the head of the hollows. Now we’re making them tighter and smaller. You know, we’re trying to comply but it’s – we didn’t do the big fills because we had to – wanted to get out of doing these individual and 404 permits. Now we’re doing smaller. But

now they're starting to look at the cumulative impact of a whole lot of these little fills. Then they're saying don't put it in the ditch, perch it up on the side of the hillside. That is some of the worst things we can do. You know, we should have been encouraging, really, to do the bigger fills – you know, have one fill instead of three or fills. When you perch them up high, there is – you start to question the stability. If you have one large fill – these are very stable. These have not failed. And I know every now and then you'll hear somebody allude to the fact that these fills have failed – I haven't heard of any. Now you may have some –

David Cooper:

West Virginia.

Bill Caylor:

But how many, Dave? I mean, you know, you're talking about one percent.

David Cooper:

Well –

Bill Caylor:

And in the – you know, when it does happen, it's usually where there's a – Come on up. Come on up.

There's usually a spring where they put this fill over and they should have found the spring and you'll see slippage because the spring will cause it to slip. But it doesn't cause it to fail.

Andrew Ernest:

You're kind of agreeing with that (inaudible) basically to determine if there is a more streamlined way of doing this.

Bill Caylor:

Yeah. There's nothing wrong with looking into a more streamlined way. We'd like to – one way, if we could revise the permits a lot quicker, that would improve things dramatically.

Laura Knoth:

I think he's referring to OSM.

Bill Caylor:

Yeah.

Laura Knoth:

As well as our cabinet.

Bill Caylor:

Yeah. And it –

Laura Knoth:

And it wouldn't be done lightly or quickly.

Bill Caylor:

Right.

David Cooper:

Can I correct the record on valley fills have never failed? I would be happy to provide you all with video tape of the –

Lindell Ormsbee:

Could you introduce yourself, Dave?

David Cooper:

I'm sorry.

Lindell Ormsbee:

For the record.

David Cooper:

I'm Dave Cooper. I'm a member of Kentuckians for the Commonwealth, and I spoke earlier when you all had the session – I can provide you all videotape of the Lyburn disaster where a valley fill did fail. On heavy rain, it slid into the sediment pond and just threw a wall of water into the community below. They were very lucky that they weren't carrying people out of there in body bags. So they have failed before and it's on tape.

Bill Caylor:

It's very rare that they fail. You know, don't – you know, if it happens, you've got to look at it – maybe where it was put, if there was groundwater, if it was perched up higher – and once it's perched up higher and steeper, it will cause the likelihood that that could fail.

Lindell Ormsbee:

Did you have any other further comments on the –

Bill Caylor:

Yes. The last bullet and through the second bullet and three – other mining alternatives and methods that could be available in the future for mining activities. We operate under a law that requires us by statute to maximize coal recovery. The law does not want us to come in and re-affect the same area more than once. And most people don't realize that we have surface minable coal and we have deep minable coal. During the Sego disaster – incident – accident – whatever you want to call it – tragic event, I had a call from CNN that wanted me to talk on how we could prevent these underground mining disasters by coming in and just surface mining everything. I mean, people have no concept of coal mining. They think you don't need to surface mine, you can deep mine it all. You can't. These upper seams can only be mined by surface mining and these lower seams can only be mined by deep mining. And, if you didn't have this, that doesn't mean you would do more underground mining. I know one side will argue that, if we did away with surface mining, we would increase the number of employees working underground and it would take more employees, but that's not the case. If you do away with surface mining, these jobs will be lost period. You know, it's economic voodoo to imply otherwise.

Lindell Ormsbee:

Do you have any other comments on these –

Bill Caylor:

So the other methods available – you need to factor in that the law requires you to maximize coal recovery and mountaintop mining takes a hundred percent of it. So we go through and take, not just – we take multiple seams and take a hundred percent of that.

Now the bullets, at the very end of it – I think the Commission recommends that review blasting plan.

I think it's an excellent idea to review that. Conduct alternative analysis. We do that and there's nothing – and design mine sequencing with the goal of reducing the size and number of valley fills. I think that the first bullets and the end bullets summarize what you're trying to get at here.

Work with the Division of Abandoned Mined Lands to determine the feasibility of using excess material to recover.

We can do that. We ought to do that.

Dispose of excess spoil material through the location and design and configuration, which minimizes and compensates fully for the adverse impacts on the environment.

We do that now, and we can continue to do that.

Minimize disruption to communities and relieve stress by, you know, constructing roads or conveyor systems.

That's an excellent idea. But, you know, the inside is you're trying some of these agencies to do a lot of work and a lot of this is – I don't think we should single out the coal industry when you look at areas like dissolved solids and conductivity.

Lindell Ormsbee:

Okay. Thank you Mr. Caylor. Do you have any comments?

David Cooper:

Yeah, I have a few and, just in the ten minutes or so that I've had to look this over – I appreciate the opportunity to speak and present to you all before.

While Bill was talking – there was another valley fill that failed in White Oak Hollow in West Virginia during a heavy rainfall and what they've done in West Virginia to deal with this problem is the – instead of putting sediment ponds at the toe of the valley fill, they've moved them hundreds of feet away from the toe so that, if the valley fill does slide, it doesn't slide into a sediment pond and, you know, throw a big wall of water into the community.

Do that's –

Bill Caylor:

And we were just sued over that by Tom FitzGerald. We used to have them on down a way, and now he's forced us to go up almost to the toe of the field. You know, we're in a no win situation. We're being beat on by every – Point well made. You know, we'd like to do that. You know, it's frustrating.

David Cooper:

That was actually a compromise solution. The initial – the Department of Environmental Protection's initial response to these valley fill slides was they were going to force the coal industry to build the valley fills from the bottom up and compact them as they go up. The coal industry didn't want to do that because it would mean heavy trucks up and down the mountain. They thought that was a safety issue so the solution was move – but anyways.

Bill Caylor:

And we might be able to study on that and come to some kind of agreement on that. There are some safety issues. Some companies will do it that way. Other companies don't. So that's a good point where we could look at the scientific nature of it to determine, really, the cost effectiveness of it.

David Cooper:

The bill that's been introduced in the legislature would, basically, as I understand it, would prohibit them — coal companies from putting mining waste into valley fills and that was introduced by Representative Paisley or Pasley from Winchester –

Lindell Ormsbee:

Where would the valley fill be placed then?

Bill Caylor: We would have to helicopter it off to Lexington because we cannot do any kind of mining operation without having some kind of excess material left over.

Lindell Ormsbee: I'm just wondering if the bill stipulated that it can't be put here but it could be put here.

Bill Caylor: No, it didn't. It just prohibited from going in streams and streams are every little ditch. So, you know, if they would extend that courtesy to real estate development and, excuse me Laura, but farming, and highway construction, then we can ban it in every stream in, not just the state, but the nation.

David Cooper: The second bullet point under number two – pH, iron manganese, and TSS – one mineral that you might want to add to that is selenium. My understanding is that that is being found in streams below valley fills. And when they hydroseed, you know, they're putting a lot of fertilizer up on the mountain so you're getting increased nitrogen and phosphorus in the drinking water too. And, you know, the – I'm sorry?

Laura Knoth: Is there a reason? I mean, I would – you're wanting to grow – I mean, is that not to balance out the acidity there or something?

Bill Caylor: To help the grass –

Laura Knoth: I can tell you, I know fertilizer is expensive. You don't waste it, so I don't understand the –

Bill Caylor: We do that. We hydroseed and mix some fertilizer in it to try to get the grass to grow to minimize any – we do that as quickly as we can to eliminate erosion, to provide stability of the –

David Cooper: The problem is – with a lot of these things is that the costs and the impacts are felt by the people downstream. So, you know, the excess nutrients in the water – the selenium and things like that – the costs for that are showing up in the drinking water bills, not on our electric bills. They're showing up in Louisville and Lexington and all these other cities.

Bill Caylor: If we get –

Laura Knoth: Is that requirement Federal?

Bill Caylor: No, and if we get into selenium, let's go after Centrum because I take my Centrum almost every day and selenium is in that and I guess it would – now, I've tried eating some coal slurry, you know, and I –

Lindell Ormsbee: Still alive.

Bill Caylor: You know, I didn't – I know.

Lindell Ormsbee: And still walking.



Bill Caylor:

I know. My wife missed a, she told me she missed an ideal opportunity to kill me that night, you know, after I took that coal slurry. She could have poisoned me and then blamed it on these guys back here and it would have been the perfect crime.

David Cooper:

Under point three – the blasting. One of the things that's not mentioned in this draft document is the flyrock problems. We had a boulder come through the roof of a house in Pike County this past summer. We had a little boy killed in Appalachia, Virginia – sleeping in his bed in the middle of the night with a boulder pushed off a mine site.

Bill Caylor:

Legitimate concerns. We are very sensitive to that and we want to see things tightened up. The boulder –

Lindell Ormsbee:

Is there any specific recommendation either one of you have how that could be done for the safety?

Bill Caylor:

Well, the boulder was when they were actually creating a road. It had nothing to do with – I guess it was mining related but they were – it just, you know, things like that just shouldn't occur.

David Cooper:

My understanding is the coal company didn't even have a permit to be widening the road. That's why they were doing it in the middle of the night. So –

Bill Caylor:

I doubt that.

David Cooper:

I think that's –

Bill Caylor:

Now, Dave, that's not very fair to – you don't know facts for sure. Let's – don't – I try to keep from that myself.

David Cooper:

I'm pretty sure on that. No mention about slurry impoundments in here.

Bill Caylor:

Can I talk about him beating his wife? And he knows it's not true. I'll ask him if he's still doing that.

Lindell Ormsbee:

Go ahead, Dave.

David Cooper:

No mention of slurry impoundments in here and, you know, that is probably one of the biggest concerns. You know, we have had the largest environmental disaster in the southeastern United States right here in Kentucky, and we had a real good hearing before the EQC with Massey representatives, and it's really something that I think we need to get a handle on. So we would like to see something about slurry impoundments in this document.

Laura Knoth:

Is this like some of the things that came out of the Black Water Task Force and all that – some of the things that came out –

Bill Caylor: I think EQC – Haven't they already acted on the Martin County recommendations?

Scott Smith: Yeah. The reason I didn't include them –

Bill Caylor: That had already been –

Scott Smith: - anything in this document was because – we just talked about this earlier today – that this group has already – I mean, sent forth a recommendation on slurry impoundments and I think – unless I'm mistaken, I think this was before I really got involved.

Lindell Ormsbee: I think we sent something forward subsequent to our testimony received from Pike County. One of those things – just an aside – I think we also recommended, with concurrence from Bill, for the necessity and utility of an evacuation plan. I think we got his support and concurrence on that. I was somewhat puzzled and disturbed by what I read in the Herald this morning, if that's accurate, with regard to the fact that, apparently, there's move to require new permittees to provide those but not deal with the existing facilities. So that may be something that we'll subsequently address, if that is accurate, what I read but –

David Cooper Our mine site with Patrick Angel and see the trees growing up there. It was a pretty impressive operation. The trees do seem to be doing very well growing in the loose spoil. The exact specifics of how that will be done and how will be regulated and go through the process, I don't have any specific recommendations. It did look good to me. It looked like something that was a hopeful – it's got to be better than what we're doing now, as far as just these grasslands that are so compacted that I don't think – it will be hundreds or even thousands of years before we have a forest back on them. So –

Laura Knoth: And that came about because of some research that had been done here in the state.

Scott Smith: At U.K.

Laura Knoth: And the action had been mandated to make sure the mountains start back together, right?

Andrew Ernest: Right, right.

Laura Knoth: And so this is a major change, to allow this to happen.

Bill Caylor: When they pass –

Laura Knoth: Was that an exemption, now, or is that a new rule that allowed that to happen?

Bill Caylor:

It's not an exemption. There's new policies that encourage it.

Laura Knoth:

New policies, okay.

Bill Caylor:

When they passed the Surface Mining Act in 1977, they did not listen to the foresters. They wanted to see things compacted and smooth. They had what I call the golf course mentality. And what they did, they over compacted for several years. And we're finally realizing that wasn't the right thing. It took the foresters a long time to try to convince the industry that that's not the way to go. Convince not just the industry, convince the regulators – state and federal. Now, the next step in this is convincing the landowner that once they do the reclamation, you're going to see a pile of rocks and it's going to freak you out, but what you won't see is what it looks like in five or ten years. And I think David has seen that. Once you see it in about five to ten years, it's phenomenal, the growth. You know, it almost doubles the growth of valuable hardwoods. But the next step is, the education process for the local landowners.

Dave Cooper:

I feel like it's going kind of a tough sell for the landowner because it's messy looking and you've got to look at it for several years. It looks like a pile of rubble. Instead of smoothing out, it's stumped in these piles and it looks like a rubble pile.

Bill Caylor:

But what you don't see, over time, it essentially melts down. With the freeze-thaw cycle, this rubble pile will essentially melt, but you've got to give it, you know, five, ten, fifteen, twenty years. If you go to West Kentucky where they do that and look at these areas. I mean, you cannot tell that there was mining, and they left it in these piles, and you've got phenomenal tree growth.

Lindell Ormsbee:

Is that cheaper for the mining industry?

Bill Caylor:

It's actually a wash. It's just more of an education to get them to do it and educate the inspectors to allow them to do it. You know that mentality that which is so strong to do it – that golf course mentality with everybody. It's taken almost ten years just to –

Lindell Ormsbee:

Well, it seems to me that that may be an area where the environmental community and mining community could partner to work up --

Bill Caylor:

Absolutely.

Lindell Ormsbee

-- educating, you know, landowners. It might be a win-win for everybody.

Laura Knoth:

So it's starting to happen now?

Bill Caylor:

Yes, it is.

Laura Knoth:

I mean I know it's not going –

Bill Caylor:

What we're saying now is trying to educate the landowners. You know it took a long time to educate the operators on this, that it's almost a wash. You know, you spend more money doing this but less money doing that. So, it kind of washes out on the expense. Then they had to educate the federal and state inspectors on this. That was a good idea. Then you've got key people like Pat Angel – with – used to be an inspector with OSM, one of the most zealot inspectors, you know, one of the most – but he has seen that and it's incredible. Now he's promoting that and doing a wonderful job on it. So we need to convince the landowners that this is the way to go because you can create valuable hardwoods, you know, in a little more than half the time. You know, the roots just go crazy down in this pile of rocks and it will absorb a lot of the dissolved solids in the water and stuff and it will possibly impact the water quality.

Lindell Ormsbee

I'm curious. Has anyone ever done any research to that effect? When they did the reforest, did they do downstream water quality monitoring?

Bill Caylor:

I think they're starting to do a little. I think they're working with KGS, Kentucky Geological Survey, to see. I think it's a little bit premature to see the results, but it looks promising is what I've been told. It looks like it's really sucking up a lot of the dissolved solids.

David Cooper:

The test pods are pretty small, you know, in order to do that kind of study.

David Cooper:

But just a number to throw out here, when we're talking about mountaintop removal and trees, the number I've got is sixty million board feet of hardwood timber lost every year from mountaintop removal. So, when we're looking at, you know, a future sustainable economy for Eastern Kentucky, you know, we like to think that timber is one of the things that will still be there when we're done with mountaintop removal. So, I definitely see – you know, we have concerns about the reforestation imitative but I definitely see some very positive things about it and I think it's something that we will probably want to encourage. Not everybody in the environmental --is totally on board with it.

Lindell Ormsbee

Do you have any other thing, Dave?

David Cooper:

Yeah, just real quickly. The last bullet point, as long as we're talking about coal trucks, let me just mention a couple of things that they're doing in West Virginia. With the new legislation that was passed in West Virginia, every coal truck has a phone number on the back of it, where it says 1-888-CALLTRUCKS. And people can – if they see coal trucks speeding or disregarding traffic signals or tailgating or going over the yellow line, all these things that they do, they can call – a citizen can call in and report this. Each truck has a number on it. So, that has helped keep the trucks in line, as far as obeying the traffic regulations. And they also weigh the trucks at where they're loaded and where they deliver. So, if the truck is overloaded, the coal company is the one that's fined, not the driver. And this has been an effective way of controlling the weights on coal trucks. But the system is now that the driver is fined and he's already working fourteen hours a day

and the juries are sympathetic. So, well, they just said, “Well, let’s put the fine on the coal company that illegally overloaded him,” so – The article on the front page of USA Today this weekend – I don’t know if you saw that or not, Bill, but –

Bill Caylor:

I didn’t see it.

David Cooper:

It was an analysis of fines on the mining industry versus other industries that are being fined by the federal government. By far the mining industry is the least fined, according to this analysis. And you know, we’ve got sixteen dead miners now in West Virginia. We’ve got the worst environmental disaster in the Southeastern United States right here in Kentucky. So, when we talk about streamlining permits or – you know, Bill gets frustrated with the difficulty in getting permits and so on – I maintain that it should be difficult for them to get permits. The damage that is being done here to these mountains is permanent. Nobody is ever going to put these mountains back. And a thousand years, ten thousands years, a hundred thousand years from now, what we’re doing right now in Kentucky, the damage is still going to be there. And you know, as the Environmental Quality Commission, I can’t think of a practice that’s being done to the environment in this county that is any more devastating and long-lasting – you talk about road construction or building houses – there’s no comparison. And go down to Highway 80 just east of Hazard. You can sit in your car and look at it and see for yourself. It’s just that the scale, the scope of this destruction is just so immense, it does need to be regulated, and I really hope that this document will not be any weaker – I’m not saying it’s weak – but I don’t want to see those documents weakened any further.

Bill Caylor:

With due respect, you know, I take an opposite viewpoint. I think we’re helping the community. We’re creating some level land. You’re seeing, for example, in Hazard, about a year ago, they did an analysis of the population decline in Kentucky. You know, where the population gained and where it decline, and all of the population decline except Perry County. That’s Hazard. And it showed – it was in a cut where it was zero to four-point-nine-nine percent (4.99%). I don’t know how much. It was a positive. It grew. The entire East Kentucky declined. And I argue that that was because we were diversifying the economy in the Hazard area by the creating of land where we can diversify our economy, and I think that’s positive. It’s – you know when man impacts the environment, there’s the growth – there’s the traditional growth and no growth argument. You know, should we have growth? Should we have no growth? I think we need to have responsible growth, and I think that’s what we need to be focusing on, not absolutely no growth. I think we’re creating land that will sustain the economy of Appalachia and East Kentucky for hundreds of years to come. I will argue that the land around Hazard – Hazard will be the economic hub – one of the economic hubs of East Kentucky because of what we’re doing – creating the land for diversity today. And there’s nothing wrong with that.

David Cooper:

Well, mountaintop removal is a dead-end street. We can go down this road for the next hundred years expecting it to bring prosperity to Eastern Kentucky; it’s never going to happen. It’s just going to get poorer and

poorer. And as the land gets more and more torn up, we're going to be sitting back and looking at Eastern Tennessee and Western North Carolina and their booming economy and their million dollar mansions on top of the mountains and all these very wealthy people that are retiring to Eastern Tennessee and Western North Carolina and saying, "Why don't we have that in Eastern Kentucky? How come those areas are so desirable and everybody is leaving Eastern Kentucky?" There is no way this is going to make Eastern Kentucky better. You don't build the economy of an area by destroying the natural beauty.

Bill Caylor:

I argue to take you – just go to Stonecrest and just see if you wouldn't want to build a house up there on the top of one of these mountaintop jobs. It's absolutely beautiful up there. You know, this argument is a no-growth argument, and we're going to impact less than seven percent of Appalachia. It's a very small percent. And what we do impact is going to provide the sustainability for the future generations of Appalachia.

David Cooper:

Bill, I don't want to put on a radio show again. Go ahead.

Laura Knoth:

Is there – is it just in general the mountaintop that your organization opposes or, I mean, what about the deep mining? I mean –

David Cooper:

We're not opposed to deep mining. We feel like deep mining provides a lot of jobs for Eastern Kentucky.

Laura Knoth:

I'm just curious. It's like we all know we need to –

David Cooper:

Mountaintop – yeah.

Laura Knoth:

-- harvest the resource.

David Cooper:

It's mountaintop removal that we're opposed to.

Laura Knoth:

Just for them?

David Cooper:

Yeah.

Bill Caylor:

And their closest –

David Cooper:

Mountaintop removal produces – mountaintop removal produces somewhere – the figures I've gotten – less than five percent of America's coal. Okay. So, what we're not talking about in this country anymore is energy conservation. At our house, just for example, we cut our electricity bills in half just by buying a more efficient refrigerator and changing our light bulbs to the compact fluorescent bulbs. And this is the kind of thing that we, as environmentalists would like to see, is encouraging people to use more efficient appliances, more efficient lighting, use less, turn computers off. And we cut our electric bill in half. If mountaintop removal is five percent of the nation's coal supply, let's stop blowing up mountains and let's just start using less electricity. That is our viewpoint. It saves money, too. We're sending less money to the electric company.

Bill Caylor:

I'm going to surprise you. I'm going to agree with David. You know, I think we do need to conserve more. And I think that that is an excellent way that we can cut our use of electricity, and we need to do that. I mean, we're really gluttons for electricity in this country, and these are things that we can do to minimize electric, and it will minimize the burning and mining of fossil fuels, not just coal. And nuclear and hydro and all the other sources that produces energy for our country.

Lindell Ormsbee:

Well, again, I want to thank both of you all for your feedback. I think this will help us in finalizing our recommendations and I know we'll probably not come to a complete consensus here, but, again, I want to thank you, Mr. Cooper and Mr. Caylor for your perspectives and comments.

Bill Caylor:

Thank you.

Scott Smith:

I want to consider – and the suggestion is because this issue is as complicated as it appears – that you might want to form a work group to move this issue ahead so, at the next meeting, you've got something more concrete than – because this is – all of the – it's a good place to have discussion. I think that there's some more spade work that's got to be done with OSM, with the state and, you know, with the people that were here so that the full Commission has got something that it can really get its teeth into. But that's just a suggestion.

Lindell Ormsbee:

Well, or we could also make – one of our recommendations could be that the Cabinet, or whatever the appropriate entity is, formulate a task force to look at this in more detail and, basically, set some more parameters or some guidance based on our findings. I mean, we did have a day-long forum where we got a lot of information in and I think that was very insightful, and I think we got, I think, a lot of comments back from our public hearing. So, I think – there's – obviously, we can keep looking at this in greater detail to formulate some more detailed policy. But I think we have enough to, probably, to formulate at least some recommendations. And we've got, I think, at least a little bit of consensus on a few of the items from all representation here today. So, one of those things that may come out of that by way of recommendation might be some type of task force or something. So, I –

Andrew Ernest:

I think we have a responsibility to get something out fairly soon. And I think I agree with Scott Smith. There's a lot here that merits more discussion and involvement of some of the agencies that are tasked with some of the things, and I think that, probably, is going to be something that we can –

Scott Smith:

The Department for Natural Resources is working on mine safety and that is really covering us up right now. I would appreciate if you would keep that – you know consider that in terms of how soon. But, hopefully, here in the next several weeks, Susan Bush could be freed up to participate in something like this. And we need to get – also engage the Office of Surface Mining, as well, because I think there's a lot of good ideas. We just need to

know how to make the system work or can it work or figure out how to get some of this stuff done. I think – I mean, we’ve got some great information, I think, with the stuff that we picked up through the – during the public hearing and the presentations that were made here. I would venture to say most of us haven’t had a chance to get into and really look at that stuff, and I think it’s – and I’m not talking about an extended period of time. I agree with you all. We need to be able to get through this – we’ve got the information – so that we can begin to get an action plan, for lack of a better word, moving forward fairly quickly. So – but I just – this is not a good forum to – maybe it is – but to get the details of these issues discussed and some alternatives for the board, as a whole to consider.

Laura Knoth:

I agree. This is a wonderful opportunity to hear opinions, and I appreciate getting a feel for that, but I would believe – I need to know numbers and the big picture impact of that. What kind of coal is there and –

Andrew Ernest:

The process that went through to develop this document, I think. Maybe not this extensive.

Laura Knoth:

I can tell you that’s one task force you won’t find me on if that’s the case.

Andrew Ernest:

But something of a similar –

Scott Smith:

And it may be – and I don’t like incrementalism at all, but there may be pieces and parts of this that, as we look at it, that become apparent that we really need to do this now. And there’s other things, but I think the first step is to get some of the participants here today with OSM and the state and say: What can be done? To make sure we at least know the parameters that we’re working with.

Lindell Ormsbee:

Well, I mean, to a certain degree, we spent a whole day doing that. So, I guess I’m a little bit frustrated to say – I think we have a moral obligation to the citizens that showed up for Prestonsburg. We told them we would be responsive to that. So, on one level, I think we have an obligation to come out with something. Now, I think my perspective would be that we can – Ernest can take a shot, maybe, at recrafting this. We can still circulate that, and I think that would be fine if we circulate that to the appropriate agencies to get their feedback. If they think, you know, we’re way out of line on something.

And then we could have a recommendation for a more in-depth follow-up. But I guess I don’t want to get hung up where we can’t just – treading water and not getting at least some type of response.

Scott Smith:

No, it’s got to move forward. My concern is that we make a recommendation to establish policy that can’t be implemented.

Lindell Ormsbee:

No, I understand. And I think that’s why we should circulate this by the appropriate agencies to get that type of feedback saying this is not going to fly or something. But I guess I think we’ve got enough information based on our previous two days testimony and a little bit of supplement here that we can at least craft something that will be meaningful. It may not be as



substantive as we'd want ultimately, but – So, I guess I would maybe argue for at least some level of incrementalism – at least get something going and then, again, that doesn't preclude us from recommending a more in-depth activity, either by EQC or through the Cabinet or whatever.

Any feedback on that?

Andrew Ernest:

I would concur with that. I would basically say – we take a crack at updating this to incorporate the comments today. Pass it by some of the key agency folks and trying to get this resolved by the next time we meet. And, possibly, one of the recommendations would be a recommendation for the study.

Lindell Ormsbee:

Yeah, I'd like to have something to act on at our next meeting, if possible.

Scott Smith:

Well, you've got new – some board members that aren't here today –

Lindell Ormsbee:

Exactly.

Scott Smith:

That we can educate – I mean, get this – and I think, quite frankly, with the information that was presented, it would give you all time to take a look at that and review it as well. And if there's questions or things that staff can help you get answers to in the interim – well, we can do that.

Laura Knoth:

I found several of the comments important. The issue of the flyrock and I understand Bill's point about the water quality study. That's ongoing, statewide, stream-by-stream, through process and procedure, every stream that – I can see why the industry would feel particularly – singled out by doing this. So, I see points on both sides that, you know, need to be reviewed.

Lindell Ormsbee:

Well, we have got the minutes of those meetings down – or at least our forum here, rather – to look at as well – where we had all the testimony.

Laura Knoth:

And I think something that the Commission's role would be good at, is this whole issue of education and encouragement of landowners on the reforestation. I mean, that's a huge role we could play in this part. I mean, probably as much as any part of this, because the majority of the rest of it is regulatory.

Lindell Ormsbee:

Right.

Laura Knoth:

So, that part, I think, is what this group would be focusing on.

Scott Smith:

We've got quite a bit of information on reforestation that was in that package. And what we might want to explore, staff-wise, is to take that information that we received and get it – see about getting that on CD-ROM that could be useful to any and every –

Laura Knoth:

I mean as a combined effort with the forest issues we've dealt with.

Lindell Ormsbee:

Uh-huh.

Scott Smith:

There's some good stuff that you can take advantage of.

Lindell Ormsbee:

Do you have a comment, quick, Dave?

David Cooper:

I was just going to say I could help with that in Lexington through our Reforest the Bluegrass Project. We had to develop a methodology for addressing this "look" issue that it looks like heck in the first five years. So, we have done some things to address that.

Lindell Ormsbee:

Okay. Appreciate the offer, David.

Lindell Ormsbee:

Any other issues before we break for lunch?

All right. Thank you all for your attendance.

[LUNCH BREAK]

Mr. Lindell Ormsbee reconvened the meeting. The next agenda item is to get an update on regulation legislation pending with the Cabinet. With us here is Karen Wilson, Policy Advisor to the Secretary, Bruce Scott and Tony Hatton with the Division of Waste Management, and Leah MacSwords with the Division of Forestry. Welcome.

Karen Wilson:

Thank you for having us. We're going to do an update of the legislation that the Cabinet has sought sponsorship on and also some of the regulations that are going through the process. So, I'll start with some – just kind of a brief rundown of the bills that the Cabinet is sponsoring, and Bruce is going to talk in detail about those that affect Waste Management and us.

Okay. House Bill 408, it's Representative Gooch. That's one of our bills. And that is merely changing the statutory authority to implement the asbestos program. It's currently, statutorily, in the Division for Air Quality and we're moving that position to the Cabinet so that we have flexibility with that. And I'll speak in more detail on some of these, but I'll just go through the list. House Bill 383, that's one of our bills that sponsored by Representative Gooch that increases the penalty for drilling water wells without certification.

Senate Bill 75 is the hazardous waste reauthorization.

House Bill 145, although it was not one that we sought – we were going to seek sponsorship on, but somebody had filed it already, and that was the waste tire fee. And that's Representative Paisley.

Senate Bill 50, Senator Kelly. That's to set aside money from the Kentucky PRIDE.

Senate Bill 76 is post closure monitoring of breaker sites.

Senate Bill 147 attaches the Best Management Practices Board to the Division of Forestry.

And then we have some others in Natural Resources: Senate Bill 136; Senate Bill 137 and Senate Bill 138.

Senate Bill 136 is cleanup on some language that had been disapproved by the Office of Surface Mining.

137 and 138, they have to do with blasting and the Surface Mining Program, and I can go into more details on those, as well.

Senate Bill 137 and 138 both have to do with blasting. One has to do with – there is currently an exemption for surface miner blasting from continuing education requirements for bringing those folks into the continuing education requirements.

And House Bill 470, Representative Gooch, and that has to do with the administrative hearings process and that one passed the House, actually, on Friday. So, I'll be glad to tell you the status of all those as we go through this, but I thought I'd let Bruce Scott talk about, in detail, those in the Waste Management.

Bruce Scott:

I gave you handout there that's got a couple of things on it. It's got four pieces of legislation updates and the three regulatory initiatives. I'll focus my time on those four legislative items. And we'll just run through those real quickly here.

Senate Bill 75, Senator Harris sponsorship, for the reauthorization of the hazardous waste assessment fee. There are roughly 800 registered hazardous waste generators in Kentucky. They generate around 1.8 million dollars per year. That dollar amount has gone down fairly steadily each of the last handful of years as either things have closed down or exemptions have been granted via statute. For example, The LWD incinerator down at Calvert City that shut down. That was a fairly substantial decrease in revenue because of it. There have been other entities that have been exempted out per statute, but as of right now, it's about 1.8 million dollars per year.

As you may or may not know, twenty percent of that goes to pay for the Kentucky Pollution Prevention Center at the University of Louisville. It also helps pay for the emergency response activities that we have – spills alongside of the road, things of that nature. Our ERT staff will address that. Then the bulk of it goes toward the payment of cleanup of sites that we identify across the State of Kentucky, that's called our State Superfund. The State leads Superfund sites.

The legislation, also, we did an analysis of our ability to process fees, and we found, as you might imagine, that it costs some amount of money to process a given receipt, in our case about fifty dollars. We get a fifty-dollar check, it takes my staff and then, subsequently, the other cabinets' staff who are involved about fifty dollars on the whole. We saw fit then to say: How many people are paying that amount or less and how much money does that entail?

Well, there are about 400 or about half of the 800 registered generators pay fifty dollars or less, which amounts to around six or seven thousand dollars out of 1.8 million. So, we propose to simply exempt that universe. It's a small business initiative as well as an efficiency measure for our benefit.

So, those two items, that has been passed out of the Senate Committee, off the senate floor.

It is now over in House Committee at this point in time.

Laura Knoth

Just give us a couple of examples of these small fifty-dollar fees.

Bruce Scott:

I could give you –

Well, if you look at the fee in the second bullet there, it's 1.2 cents per pound of liquid waste; .2 cents per pound of hazardous waste.

Lindell Ormsbee:

Is that produced or just in possession –

Bruce Scott:

Generated. So, if they only have fifty pounds or a hundred pounds, it's going to be much less than fifty dollars. So, those are the type of people you're looking at, is people who are small quantity generators by and large. Senator Harris used the example on the Senate floor of the Courier Journal that generates some fourteen dollars a year in hazardous waste fees, and he questioned –

He questioned whether or not that would kill the bill for giving –

Laura Knoth:

Like from the printing process?

Bruce Scott:

Yeah, exactly. Exactly.

Laura Knoth:

Okay. That's the kind of thing that –

Scott Smith:

It's when they clean their presses, stuff like that or rollers.

Laura Knoth:

Yeah, Uh-huh. Well, I wondered what some other fifty-dollar –

Bruce Scott:

Well, there are many.

Lindell Ormsbee:

I assume the universities are a higher item, right?

Bruce Scott:

Actually, we've got a full list.

Lindell Ormsbee:

Just out of curiosity.

Bruce Scott:

We could provide that to you, but I don't know, Lindell, off the top of my head whether they are or they aren't.

Lindell Ormsbee:

The reason I just – superficially, I know on all grants through U.K. there is a fee that we have to pay that goes towards the hazardous –

Bruce Scott:

Right. On a segue on that point, not to get off topic here, but something universities, in general, need to do is the creation – establishment of environmental coordinators. They struggle – for lack of a better word – trying to coordinate their environmental activities across the entire state, much less at the larger universities. And that's something that we would certainly like to see done better in our higher learning institutions.

House Bill 145, which is reauthorization of tire fees. One dollar per tire purchased. You go to a tire dealership, generally, there's supposed to be a one-dollar fee. That's supposed to be posted.

Yes.

Andrew Ernest:

This does not exempt them from processing the – putting the application in. It's just the processing – the fee processing that's being –

Bruce Scott:

They still have to file that receipt with the Revenue Cabinet, and they are still a registered hazardous waste generator. So, the only thing they are exempt from is actually paying the fee.

On the tire fee: Generally, it's posted. You go to a tire dealership and there's a one-dollar fee there. Sometimes you'll see a two- or three- or four-dollar fee. It's only supposed to be one. If they want to charge something additional, that's not because of the statute; it's because of how they want to do business.

Two-point-eight million dollars a year. There's probably three-and-a-half to four million tires sold each year, so you have to ask yourself: Where's the balance of it at? It's just a difficult thing to do to collect all the money. We try to do the best we can on enforcement of that and have had a number of initiatives over the last few years trying to collect that fee, and we've done a really good job, but it is a challenge to collect all that fee.

That money goes towards cleaning up of large tire piles, as Laura can be familiar with, that whether it's on a private or public entity out there. The Tire Amnesty Program – which has been very successfully, the Area Development (AD) District coordinates the collection of tires in their respective AD district. If somebody wants to – a farmer has fifty tires on their farm and they want to get rid of them, they can take them to this tire amnesty program which occurs once a year in their area and they can get rid of those tires, essentially, for free. And the Commonwealth will then take those tires and either dispose of them properly or re-use them, preferably, in some beneficial or re-usable manner.

Crumb rubber grants. In the last two years, '04 and '05, have given out a fairly substantial amount of money. I forgot the exact amount, but it's like 1.5 million or something like that in crumb rubber grants to, I think, 84 different counties across Kentucky. They use it for athletic fields, playgrounds, things of this nature. In general, if you use it for a playground, it's a safer thing than if you had wood chips or other type of mulch material because of the reflex, the rebound, that you have in the crumb rubber. For athletic fields, you put it in, generally speaking, not the whole field but the center portion of the field where you have the predominant use and the longevity of that field is greatly enhanced, because you take the crumb rubber and you blend it into the top couple of layers of topsoil. And so we've saved – it's a higher upfront cost, but you save quite a bit of money in maintenance and long-term in terms of the use of your athletic fields.

We're also looking at some other waste tire development markets, as well, to try and make this a –

Gene Zick:

Could you define crumb rubber for me?

Bruce Scott:

They take the actual tire and they mulch it up very fine. When I say very fine, you're talking particle size is maybe a quarter of an inch to a half-an-inch in size or so that they actually will blend into the topsoil and it actually becomes part of that layer. The porosity, then, is better. The drainage is better.

Gene Zick:

What happens to the metal in the tire?

Bruce Scott:

That's all taken out. As a part of the process, all of the metal has to be pulled out. They have a magnet process that actually pulls all that out. You also may – if you have been to some of the newer home developments, you'll have seen rubber – crumb rubber mulch. Instead of using mulch that you would buy, typically, at a Home Depot or a Lowe's or some place, they actually put down mulched tires, and they color it, and it stays that same color and that same texture for many years and you don't have to ever replace it. As a matter of fact, I was at the Louisville Home-A-Rama this year. We made a point of that, and all of those homes – most of those homes, I should say – had crumb rubber there as their landscape mulch. And these homes were a half-a-million to a million dollars in value. And so we're trying to develop the private sector market to the point where we won't, potentially, won't have to have the fee anymore, so that they'll, actually, be able to generate their own market for that.

Gene Zick:

Did you add it to asphalt at one time?

Bruce Scott:

We've investigated, and still are, rubberized asphalt. One of the problems with that is going through the Transportation Cabinet's Alternative Source – whatever that committee is called – but it's an alternative committee that they use over there, whether it's glass, tires, or other substances that we try to get them to use for some sort of beneficiary use. But we're looking at that as we speak.

Laura Knoth:

Is that the main – the crumb rubber program, is that the main market for the tires. I mean, this is something that, you know, the agricultural community supports so much. To be able to get rid of these things.

Bruce Scott:

The biggest user by far is the tire derived fuel.

You have Maysville East Kentucky Power who is in the process of getting up to speed; Owensboro Municipal Utilities; and then New Meade-Westvaco. If those three entities come to full fruition, they'll be able to burn around four million tires per year, which is the amount of waste tires we generate per year. And as some of you are probably aware, fuel efficiency and the cleaning aspect of that from an air emissions point of view is actually a better fuel source when they blend it in properly, than it is just virgin coal. So, they blend it in at a slow rate or a minor rate, and when they burn that, the NO<sub>x</sub> and SO<sub>x</sub> emission is very clean. The issue you have is making sure that when you design the boilers, as Mr. Zick spoke to – that you don't leave metal in there that gets bound up, actually, in the boiler. And so they have refined that technology pretty well. Fluidized gas combustion, for example, has been pretty successful in that arena. But the biggest one, Laura, is easily tire derived fuel.

And secondary markets like crumb rubber, rubberized asphalt, you know, things of that nature. You need those in order for the private market to get to the point where you don't need the fee anymore. But we want it to definitely get to the point where we can at least burn them all in a beneficiary use manner, which we're doing. So, we've done a good job on that front.

Laura Knoth:

So, we don't have them going back to a landfill?

Bruce Scott:

Well, there are tires going back to the landfill, no ifs, ands or buts about that. And they use them in a number of ways; for example, one of the ways, they have a – and I'm not the best one to describe this, but you can make it like a fluff layer at the bottom of the landfill, as when you have long objects that might protrude through the liner at the bottom. They'll put a fluff layer sometimes at the very bottom of the landfill of some thickness to help avoid that penetration from – once you have a lot of pressure from the top – a board or something of that nature, or a tie rod that might force its way through the actual landfill liner. So, that's one use of it.

We have, essentially, negated it for what's called "alternate daily cover." Some people will mulch it up and put it on top of a landfill. And we've been frowned upon that, particularly in light of the Cooksey Landfill which had a fire out there, and that was, in part, part of the reason that it caught on fire. So, there are some of it being disposed of.

Gene Zick:

Using it in beach erosion.

Bruce Scott:

Yes. Of course, we don't have a whole lot of that. But that bill is out of Committee, passed off of the House floor and is now over in Senate Appropriations and Revenue, where we hope it will be heard soon enough.

Senate Bill 76 – Post-Closure Monitoring. That's kind of a – unless you work in this area, you probably won't be too familiar with it, but for sites that are closed under the Hazardous Waste Program post-closure monitoring, we have about twenty or so sites that are doing post closure monitoring currently. As part of that requirement, they must do a minimum of thirty – under current statute – a minimum of thirty years monitoring. Once they have deemed that site closable for protection of human health and the environment, they must monitor – for example, groundwater, for thirty years. Under the federal program, they allow you to cease post-closure monitoring before thirty years.

Lindell Ormsbee:

Is this CRCLA you're talking about?

Bruce Scott:

It's actually Hazardous post-closure monitoring program.

Lindell Ormsbee:

Oh, okay.

Bruce Scott:

And they allow you to cease it before thirty years if you can demonstrate that it's not going to be any additional harm to protection of human health and the environment.

So all we've really done is propose to change this statute to conform with what the federal law says. As a part of the discussion process in that bill, we put what amounts to be a reopener clause in there – in the event that we find information or find some analytical evidence that indicates it was prematurely closed, we can go back and reopen that site. And so that satisfied some of the environmental concerns that were present. And again,

that bill has passed out of the Senate and is now over before House at Natural Resources.

Lindell Ormsbee:

What's the specific duration that's specified? Or is there one?

Bruce Scott:

It does not specify a specific duration. That's one of the things that we'll have to deal with as we get into program implementation, whether it has to be a minimum of ten years, of twenty years. Then statute just simply says you have the opportunity to cease monitoring sometime prior to thirty years.

Lindell Ormsbee:

So, is that up to the owner of the facility to demonstrate that to your all's satisfaction then?

Bruce Scott:

Yes, that's correct.

Lindell Ormsbee:

I'm just thinking, for example, down in Paducah.

Bruce Scott:

That one.

Lindell Ormsbee:

DOE. Would they be –

Bruce Scott:

-- well, not to prematurely judge that one.

Lindell Ormsbee:

Okay.

Bruce Scott:

But it's unlikely that sites like that would opt out.

Lindell Ormsbee:

Okay. I was just curious. I just had to ask the question.

Bruce Scott:

This is really for sites that have inert metals and things of this nature.

Lindell Ormsbee:

Right.

Bruce Scott:

Where there's just not any problem at all. Matter of fact –

Laura Knoth:

Asbestos or whatever.

Bruce Scott:

There are some sites where this clearly benefit.

Lindell Ormsbee:

Well, the reason I asked it was I heard something somewhere that they were looking at trying to push that back. So I was just curious about that.

Bruce Scott:

The Senate Bill 50, which is the revision to the Kentucky PRIDE Fund, has gotten some press, I suppose, as it relates to the transfer of funds. But what this particular bill does – there's 11 million dollars a year generated under what's called an environmental remediation fee, which is a \$1.75 per ton fee for every ton of garbage disposed of in Kentucky. And that generates around 11 million a year.

Now, of that eleven million, two-and-a-half million goes to pay a debt service on a 25 million dollar bond. Two-and-a-half million per year goes



towards what's called historic landfills. These are old de facto city/county landfills that were closed or ceased accepting waste prior to 1992.

Around 750 thousand is allocated to the agency for administration – administrative overhead. And then the balance, which is the five-plus million, goes toward the cleanup of open dumps. And an open dump – for purposes of what the program views it – is two cubic yards or more, which is about the size of a standard pickup truck back end.

We have made a lot of progress on the cleanup of open dumps across Kentucky since this 2002 House Bill 174. And as a means – as a proactive means to address both the elimination of future creation of dumps and as an economic development opportunity, we believe – still believe – and that's why Senate Bill 50 is in place – or being proposed, I should say – is that a portion of the five million set aside for open dumps should be made available for two things: Recycling and infrastructure grants and household hazardous waste collection programs. On the household hazardous waste collection program side, we would think that it would be appropriate for a county to – we would fund, in part, a day or a weekend for them to go out and collect household hazardous waste, rather than someone feeling like they needed to throw it away in an open dump or throw it away in a landfill, where we don't need it either. We would actually have a formal program that would go around the state and – much like the tire amnesty program – where that could be done.

The recycling infrastructure side of things: In Kentucky – or for that matter, just about anywhere, if you speak to end-users – and by end-users, I'm talking about people who are consumers of recyclable goods – they need cans, they need bottles, they need aluminum – whatever the recyclable material may be – they will almost universally tell you, "We don't have enough. We can't get our hands on enough of it."

On the other end of the spectrum, you have the consumer, you and I, who don't – we might feel compelled to collect it, but we don't necessarily have a place to get rid of it. We don't have a place to say: Where can I take my recyclable goods to? That's not always true, but in a lot of places in Kentucky, that is the case. So, this bill is intended to close that gap, to create opportunities where there's infrastructure in place for the consumer to take the material to and for the end-user to actually go get that material. And for example, a regional initiative would be an excellent candidate for somebody who would want to get a recycling grant to serve two or three or four counties. As an example, to put in recycling bins [WORDS MISSED DURING TAPE CHANGE]

Bruce Scott:

Material that – type of infrastructure you need to actually process that recyclable goods to get it to or sell it to the end user. And to give you some perspective on this, it's costing us right now around 940 dollars a ton to clean up open dumps. It's costing us a lot more than that to clean up roadside litter. It's on the order of 1200 dollars – or whatever it is – a ton.

But 940 dollars a ton for open dumps. If you take the same material that you throw away and collect it for recyclable purposes, you would generate about 70 dollars a ton in profit. So there's a value to the state of over a 1000 dollars for every ton of garbage that somebody throws out their window or goes and dumps in the roadside dump. So, it makes perfect sense, then – at least it does to me – that if you create a situation where people no longer

want to do that, but see an economic gain – much less the environmental benefit – but an economic gain of it – that’s what Senate Bill 50 does. It gets us down the road toward trying to do that.

Those are the four legislative items that the Division has going on. I also provided you some overview about three regulatory issues that we currently have going on, and I’ll just mention those: Special Waste, UST Program, and the Hazardous Waste Program.

Special Waste, we’ve actually filed a regulation with LRC. It’s a very simple change. It’s a definitional change.

The UST Program is a substantial overhaul. We’re still working on those internally. We’re blending together what’s called the former PSTeAF or the former Petroleum Storage Tank and Environmental Assurance Fund and the former UST Branch regulations into one package. They operate on what’s called a “claim reimbursement process”. You do work. You file a claim. Unfortunately, we get into a dialog, sometimes a controversial dialogue and then we, ultimately, will repay that claim.

What this would do is change this to a fixed cost program where you have a fixed – you have a work that needs to be done. We identify up front what that fixed cost is going to be. You go do the work. We reimburse it based upon that fixed cost. Hopefully, that will greatly streamline and reduce the amount of conflict that is inherent in that current program.

The hazardous waste side, we have not revised those regulations since 1997, and we’re going back and incorporating all the federal program regulations since that time, in addition to reevaluating all the specific Kentucky exceptions for their appropriateness, as they may or may not be any longer.

So, that is kind of an overview of what the Division is doing on the legislative and regulatory front. And I didn’t mean to take so much time, but to give you a little information there.

Gene Zick:

Any money left in the UST Fund?

Bruce Scott:

We – the proposed budget transfers money in ’06, ’07, and ’08. 63.1 million in ’06; 40-some million in ’07; 17 or 18 in ’08.

In all three of those years, appropriation will be around 29 to 32 million, which is about in line with what it’s been the previous two fiscal years.

So, yeah, there have been substantial transfers, but we’re still making do with what we have left there.

Gene Zick:

Sounds familiar.

Lindell Ormsbee:

The Kentucky PRIDE Fund – does that generate funds that generate interest that’s used any way?

Bruce Scott:

Yes. The interest on the accrued amount or the balance goes to the Environmental Education Council.

Lindell Ormsbee:

Right.

Bruce Scott:

And I think this year was almost a million dollars, which is the cap that can be transferred.

Lindell Ormsbee:

Right. Now, is this going to – I think there was some concern or something over some proposals that that would significantly drop if all that money was transferred?

Bruce Scott:

Well, the lower the balance, obviously, the lower the accrued interest. Of course, I'll say this: regardless of the transfer issue, whether it occurs or whether it doesn't, the amount of interest in the future years will be minimal because I don't envision a scenario where future "carry forwards" are going to be of any substantial amount.

Lindell Ormsbee:

Right. Just thought I would ask that question.  
Any other questions for any of the Commissioners?

(No response.)

Just out of curiosity, we were talking about the 404 report that we got, and Scott gave us an update on – I guess on where that might be heading. It sounds like that might be contingent on what shakes out, I guess, of the budget. And that may be, I guess, decisional – falls back to the Cabinet. I'm just wondering – and I should have asked this previously, but can you all envision any legislative initiative that might try to somehow formalize some funds for the Cabinet to address taking that program over?

Scott Smith:

It's strictly a budgetary issue that as they work through that budget.

Lindell Ormsbee:

Okay.

Scott Smith:

You know, it will be addressed. Whether we get funding for those positions or we don't or we find – somehow there's found a stream of money that would support that. It is great now. It's really a legislative issue. I mean, we'll obviously be watching it.

Lindell Ormsbee:

Right.

Bruce Scott:

But we – it just depends on whether they – how they want to allocate the money to our cabinet.

Lindell Ormsbee:

Any other questions?

(No response.)

Thank you all for that overview. That was very helpful. Anything we can do specifically as an EQC to help you all out? That's a loaded question.

Bruce Scott:

Well, I can speak for my part. Certainly any support that EQC would give toward the legislation and the movement of that through the process is greatly supported and appreciated.

Lindell Ormsbee:

Okay, great.

Laura Knoth:

Do you have any – do you see any need for concern for any of these?

Bruce Scott:

No, but one never knows.

Laura Knoth: Yeah. I started to say – yeah. Well, I’ve listened to them as they’ve come through either one house or the other so far.

Karen Wilson: They seem to be –

Laura Knoth: They have very good support.

Karen Wilson: Broad support, Uh-huh. But it never hurts to have more support. Do you have any questions on any of the ones that I went through quickly at the front end?

Laura Knoth: As I understood them, the mining ones were just some old language being removed. Yeah, I think the last one, based on what we’ve heard today, whatever light you could shed on that.

Lindell Ormsbee: Yeah, that might be helpful.

Karen Wilson: Yeah, 136 – Senate Bill 136 is a lot of cleanup of language that had been disapproved by OSM.

Lindell Ormsbee: What about 137, 138?

Karen Wilson: Bill 137 would currently – if you’re a surface mining blaster, you’re exempt from continuing education. It’s 16 hours within three years. So, we’re – and the bill, itself, is just what had been struck out except for where we were putting those folks back into the continuing education. And 138, it is increasing penalties for blasting violations. And with a maximum of twenty thousand civil penalty for serious – for those type of flyrock incident where somebody could be, you know, seriously injured. And also increasing the penalty. Right now there is a minimum penalty that we’re increasing to make it – let me see here. Yeah, we’re increasing the range of civil fines. It’s currently twenty dollars to one thousand. We’re making that two hundred and fifty to five thousand dollars.

Gene Zick: How many violations do you have a year?

Karen Wilson: In ’05, total, we had 38 and there were 11 flyrock. Okay. And that was a slight increase from ’04 where there were 33 overall and 11 flyrocks. So –

Scott Smith: We just think that by making sure these folks are brought in, trained properly – on the one hand it’s a carrot and stick. And then having the ability to have a pretty good enforcement side of this thing. That goes a long way to minimizing the problems that we heard about today because I can – from personal experience, I can tell you this continuing education in the blasting area is absolutely critical and is something that is desperately, in my view, needed. The fact that you can get trained one time and you don’t have to go through it again, to me is a little bit unrealistic.

Andrew Ernest: What is the rough percentage increase of the fine?

Karen Wilson:

We're going from – right now, it's twenty dollars to one thousand is the –

Andrew Ernest:

To two-fifty –

Karen Wilson:

To two-fifty to five thousand. But then a maximum of a twenty-thousand-dollar civil penalty for those violations that could result in serious injury.

Andrew Ernest:

Do you have much civil penalties being – or civil actions being taken?

Karen Wilson:

I can look into that for you. I don't – and you know, this should be a strong deterrent for those. A lot of our mining operations are getting closer to where people live, and so we want people to know that – and that doesn't preclude even further penalties outside of the Cabinet.

Lindell Ormsbee:

I noticed in the paper today – there was an article in the Herald Leader about, I guess, slurry ponds and so on and a discussion about whether or not there may be some type of legislation or regulation that would require evacuation plans. If I remember the article, there was some discussion that they may be looking at putting that into permits for the future, but not necessarily making that retroactive. And I just wondered if you were aware of any pending regulations that the Cabinet might be working on?

Karen Wilson:

I'm not. Are you? [ADDRESSED TO SCOTT SMITH]

Scott Smith:

I'm not either, but that doesn't mean that Commissioner Susan Bush does not got it in some form coming through there.

I think that we could probably give you an update or find out is she does have, where in the process it is.

As well as following up on that past EQC meeting. I'm very curious about that.

Lindell Ormsbee:

Yeah, okay. Thanks, Scott.

Laura Knoth:

Are we going to hear about the forestry one?

Leah MacSwords:

Yes. Yes, I think so.

I'm Leah MacSwords. I'm the Director of the Division of Forestry. The Cabinet is sponsoring one statute this session. That would be Senate Bill 147. It's actually sponsored by Senator Jensen. It would attach the Best Management Practices Board to the Division of Forestry. When the Forest Conservation Act was enacted in 1998, it created as a last-minute amendment to the original bill, the Forestry Best Management Practices Board, but it neglected to attach it administratively to any state agency. So what that meant was that while the board members have been extremely diligent about attending meetings since 1998, they've yet to be paid for any of their travel expenses because they weren't attached – the Board was not attached to any state agency who was authorized to pay those bills. So, as part of their five-year review, the Board made a recommendation that they be attached somewhere and the Division of Forestry was the logical choice.

The second thing the bill does is the original statute tells them to conduct a review of Forestry statutes and regulations, but neglected to tell them what to do with the review after they undertook it. So, the bill would provide for them to prepare a report and to submit it to the Governor and LRC as on a five-year basis or as needed as they deemed necessary should any particular issues arise. So, it's basically cleanup language to sort of strengthen their role and give them some direction. And I must say that the Best Management Practices Board has been extremely diligent ever since they were originally appointed in 1999. And they usually meet about three to four times a year even though they're only required to meet a minimum of once a year.

The other bill that I would call your attention to, although it was not on the Cabinet's list, is House Bill 450 sponsored by Representative Comer. There are actually five sponsors on that bill. What it does is provide the Cabinet a mandate to shut down a two-time -- a logger who has two designations as a bad actor if we find them in violation of the Best Management Practices or failure to have a master logger on site. And so what this would do, if the Cabinet were to inspect -- the Division were to inspect, they would find a logger with a two bad actor designation in violation, we would give them up to one week to correct that problem, and then if it's not corrected, then we would shut them down until they do take corrective measures.

That has come out of Committee. There are two floor amendments that have been filed. The first floor amendment would extend the time to three weeks, to which the Cabinet is opposed. The second floor amendment just tightens up some of the way the words are positioned in the bill because sometimes it's where the words are that can change the meaning and we want to be sure that we are, in fact, strengthening that statute and not weakening it.

Laura Knoth:

The second floor amendment was one -- was that worked out? I know that Tom FitzGerald had some concerns with the wording.

Leah MacSwords:

Yes, yes.

Laura Knoth:

Is that the one that was worked out with him?

Leah MacSwords:

Yes, that is correct.

Laura Knoth:

And is the Cabinet supporting that too?

Leah MacSwords:

Yes, yes,

Lindell Ormsbee:

Any other questions for Leah?

Leah MacSwords:

We do have two pending regulations that have gone through the -- we filed our Statements of Consideration. One -- these are regulations that are a result of changes to KRS 149 in the 2005 session. One is -- would allow the establishment of a Temporary Master Logger designation and it allowed the Cabinet an opportunity to promulgate regulations to be able to implement that provision. So, as we are amending 402 KAR 3:020 under the Master Logger Program, we went back and cleaned up some of the language that

was no longer necessary since the statute's been – or this particular regulation has been on the books for some time. We are changing the – we are proposing to change the three day Master Logger Program by eliminating the first day which was First Aid and CPR. First Aid and CPR is an OSHA requirement and, therefore, loggers have to have it anyway, and we believe that one of the three days would be better spent looking at laws and administrative regulations that impact logging operations. It will give us a little bit more time to actually teach Best Management Practices if we don't have to worry about First Aid and CPR. However, I will advise you that we will offer First Aid and CPR in the continuing education requirements. So, the loggers will have an opportunity to get that, just as not part of the three-day program.

We are raising the fee from fifty dollars to become a Master Logger to eighty-five dollars to become a Master Logger.

And then we sat up a program for getting this temporary master logger designation. The person would have to file an application to become a Temporary Master Logger. At the same time, they'll have to file an application to become a Kentucky Master Logger and pay the fee so that they can go to the three-day training program. They're actually going to pay two fees so that they can go to the three-day, training program. They're actually going to pay two fees. They're going to pay fifty dollars to become a temporary Master Logger. At the same time, they'll have to file an application to become a Kentucky Master Logger and pay the fee so that they can go to the three-day training program. They're actually going to pay two fees. They're going to pay a fifty-dollar fee to become a Temporary Master Logger and then we also want their check for eighty-five dollars to get the into the next three-day program.

If a logger is going to use a Temporary Master Logger, they have to notify us in advance of the harvesting activity and they – the regulation outlines the various ways that they can notify us, which could be through a telephone call. It could be through a fax. It could be through e-mail. It cannot be a voice message left on an answering machine. It also outlines the various things they have to tell us, including the anticipated date of harvest at specific enough directions that we can find the logging operation, because we intend to be there to inspect. And if they have started logging operation with a Temporary Master Logger and they have not notified us in advance, that's grounds for us to shut down that operation.

The Temporary Master Logger designation is a one-time event. It's only good for four months. At the end of four months, it expires and a logger could not go back and request a renewal of the Temporary Master Logger designation.

This was a bill that was backed by – the original amendment to the statute was backed by industry. It also has the support of the Best Management Practices Board, as does the changes to these regulations.

The second regulation that we are in the process of promulgating is an amendment to 402 KAR 3:040, which is the actual removal of the bad actor designation. When the Kentucky Forest Conservation Act was enacted and established the procedure for being a logger with violations being deemed a bad actor, there was no way to get undeemed or undesignedated, so it became once a bad actor, always a bad actor. This poses problems for those loggers who go through – are designated a bad actor, they pay their penalty, they

correct their violations and yet they're stuck with this designation. This is harmful to the in the fact that there are some forest industries that will not buy products or timber from a bad actor. It's harmful to that forest industry because they have to be able to show that they are buying products that were harvested sustainably. And if somebody's got violations, then they don't want to buy timber from that person. So, the statute was amended last year to allow us to promulgate regulations with a process to get a bad actor removed – or the designation removed – if they have, in fact, corrected all their violations, paid all their civil penalties and have demonstrated compliance.

So what the regulation proposes is that once the bad actor has paid the penalty, corrected the violations, they can come to us and ask to be able to demonstrate compliance, and we're going to put them under an agreed order for two years, and which during that time, they have to notify us of any harvesting site to which they're going to be either the logger or associated with that harvest, and then we will track their progress over the course of that two years. If they have no Notices of Violations at the end of the two years, then we will remove them – remove their bad actor designation. If they do, then they have to start over again, if they wish, with another two-year process. If they mess up again and get to the third time, then they're a bad actor for life.

It also takes into consideration a bad actor who goes through the process, gets their designation removed, operates in compliance for a little while and then reverts to bad behavior again – we'll give them a second opportunity to get off the list, but if they find themselves a bad actor for the third time, then it's a permanent designation.

And as I said, we filed our Statements of Consideration. We anticipate they will be heard by Committee the first part of March, and that should be, hopefully, effective March 15<sup>th</sup>.

Lindell Ormsbee:

Okay. Any questions?

Laura Knoth:

Kentucky Woodland Owners Association, are they on board with this because I keep hearing that they're concerned about the changes to the Temporary Master Logger Program.

Leah MacSwords:

If they were concerned, they did not file any comments to the regulation.

Laura Knoth:

Okay. I think it's just misinformation. I think they're concerned that we've made it easier. I've tried – you know, every time I've had an opportunity, I've tried to explain that that's not what it does, but I think there's just a lot of misinformation out there.

Leah MacSwords:

I'm scheduled to attend their board meeting on Thursday. I'll make sure we work through any communications issues.

Lindell Ormsbee:

Okay. Thanks very much.  
Appreciate it.

Laura Knoth:

Karen, The Cabinet is supporting 450 or just at this point watching it, although it wasn't one on your original proposal.



Karen Wilson:

No, it wasn't one of the Cabinet's proposals, but we do support it.

Lindell Ormsbee:

Thank you, Karen.

All right. I think that concludes most of our formal business. We've got it.

OTHER BUSINESS:

Let's see. Do we have an update on where we stand on budget issues, Frances? Do we have any money left?

Frances Kirchhoff:

Operation money.

Lindell Ormsbee:

Okay. I assume somebody is paying you a check.

Were we in this years biennium budget? I think we were, weren't we, for like two hundred and something or what? Okay.

Scott Smith:

Obviously as a result of the last biennium, we are funding this organization out of our current budget. We have gotten every indication in the world from LaJuana that everything is OK. Again I am in the dark on the budget issue.

Lindell Ormsbee

Were we in this years biannuam budget? I thought we were for \$200,000. something?

Scott Smith

Full amount. I'm not concerned of losing the money - we will get funding. Where it gets more problematic is you reduce the budget for the entire organization and then it becomes more painful every year because your program people are going, wait, where's my hundred thousand, fifty thousand program money going?

So I think it's something, though, that the Secretary's got a commitment and sees the benefit of this organization - is going to continue to move forward.

Lindell Ormsbee:

Okay. Thank you.

Laura Knoth:

How about the report, State of the Environment Report - is that a primary funding issue, because we all know that's an expensive project. Is that something that's -

Scott Smith:

Yeah, I think - you know, pulling the information together, I think, is one thing and before, we had - this goes back a number of years - that we found somebody to sponsor the publication of that. Like Mary Bingham sponsored it, and there, you know, the possibility of trying to get some help along those lines. And today, with electronic publication of stuff, it's just so easy to - I mean, you've got an example of tremendous amount of information, your publishing - your printing costs are zip. So, I think that the one thing about the type of budgeting we're doing now is it forces you to be creative in - I think when you come down to it, you're looking at ways to leverage the technology that you've got available to you to do this. And

quite frankly, it will reach more people, more effectively electronically than it ever did, you know, with a document.

Lindell Ormsbee:

Well, you do you know what the Secretary's expectation is? I know at our annual meeting, there was a discussion of trying to do another State of the Commonwealth report.

Scott Smith:

Yeah.

Lindell Ormsbee:

And I think, obviously, the last time we did that, we had a staff of four, and we have a staff right now of two. And what's the expectation of trying to do another report. I think the Secretary indicated her desire to –

Scott Smith:

I think she – I mean, if I recall, back in December, you know, that she would like to see that happen.

Lindell Ormsbee:

Right.

Scott Smith:

I think, you know, you're going to be up to three again fairly soon. And I think the fact that because it would be a cabinet publication, that you could get help out of our public information office there as well. So, you know, I'm not too concerned about being able to get something like that out. I mean, you've got the expertise. You're going to have some smart people in here, too. Not that the ones before weren't – but I think you're definitely going to have – I think we'll have the expertise internally to help pull some of this together. Plus, this kind of stuff she's looking for and that we need is way high – we don't have to dig it up anymore. It's a priority. It's part of the Department's strategic plan to be able to look at this information and – I mean, they're looking at it and reporting it to us quarterly. So, it's – the information is going to be able – we're going to be able to get our hands on it fairly quickly, depending on – we're certainly going to have to look at what we want to measure, you know.

I mean, that's probably one of the first challenges is to look at what's been done. Do we really have – are we really looking at the right things? And then take a look at what's available, information that's available and see how we pull it together.

Andrew Ernest:

You're the only one that's been around since the last publication, that went through the last publication cycle. [ADDRESSED TO LINDELL ORMSBEE]

Lindell Ormsbee:

Uh-huh.

Andrew Ernest:

How was that executed?

Lindell Ormsbee:

I think that was actually executed before I came on board.

Andrew Ernest:

Oh, okay.

Lindell Ormsbee:

Frances was here.

Scott Smith:

The information that I remember is – it's a long – it's a number of years since one of these have been done.

Lindell Ormsbee:

Right.

Andrew Ernest:

I guess what I'm trying to get is a sense of what the level of input that will be required from the –

Lindell Ormsbee:

The commissioners?

Andrew Ernest:

The commissioners, and also from staff. The amount of direction and oversight and so on and so forth.

Scott Smith:

I think the first step would seem to be to look at the old work that's been done and see what they reported on to see if we feel like just a regurgitation of the existing data or if we want to change it up some maybe. I don't know.

Andrew Ernest:

I guess Gordon was here when then last one was done.

Lindell Ormsbee:

Gordon was here, wasn't he, Frances?

Frances Kirchhoff:

Yes.

Lindell Ormsbee:

So, he's still – we do still have that institutional member here we can check with.

What's the update on Earth Day?

Frances Kirchhoff:

I have a file that has Earth Day on it. Actually, the behind the scenes stuff has started. I've met with Corrections about getting some plaques from Corrections this year

Lindell Ormsbee:

Are these like metal plates?

Frances Kirchhoff:

They are going to be wood, carved, and I took to Scott the other day the one we did through the recycled materials and why we used them an all that. And Scott made a good suggestion that I'm going to talk to Corrections about is: Why can't we do what this outfit out of state does and start doing this across the board as part of Corrections?

Lindell Ormsbee:

That's a great idea, isn't it?

Frances Kirchhoff:

Yeah. So, I'll take that information. I don't know if you remember the letter that was sent to the people saying how they made them and how everything about it is environmentally good.

So, I plan to do that. And we do have some nominations already in. I know that Waste Management is going to send us at least a couple more. What else? It's going to be at Berry Hill.

Lindell Ormsbee:

Is that the 21<sup>st</sup>?

Frances Kirchhoff:

On the 21<sup>st</sup>, Friday, right.

We're in the process of locking down the Secretary and inviting the Governor, the First Lady, other people like that that you've got to get out early on.

And that letter has already gone over to the Secretary's office also.

Lindell Ormsbee:

And the nominations cease on the 20<sup>th</sup> of March?

Frances Kirchhoff:

The 17<sup>th</sup> or the 20<sup>th</sup>, I can't recall.

I believe I put on the newsletter the 20<sup>th</sup>.

Johnna McHugh:

Consider this encouragement, to please send us nominations.

Frances Kirchhoff:

On the state Public Servant Award, as well as the Lifetime Achievement Award.

Lindell Ormsbee:

Okay. Can you send us kind of a list of people from the past, so we can kind of –

Frances Kirchhoff:

A list of past winners, yes.

Lindell Ormsbee:

Uh-huh. That might be useful.

Frances Kirchhoff:

Yes.

Lindell Ormsbee:

Let's see, any other issues.

Scott Smith:

Executive Director should hear something here in the next – I mean, literally, we're in the final throes of that. So, I mean, basically, after we got turned down several months ago, we had to restoke the process up, but she's got it. Between the Secretary and the Governor's Office, they've got it down to a few final, final, and it should be ready to go.

Lindell Ormsbee:

Okay.

Scott Smith:

Momentarily. I would think – I mean, the target is the middle of March, first part of April at the latest.

Lindell Ormsbee:

Do we want to meet in March or just wait and meet in April at the Earth Day? Any discussion? We're looking at trying to have the potential for this MTR resolution. I mean, we could meet Earth Day and then just convene briefly afterwards to vote on that, if you want to do that, or we could – any thoughts on that? I doubt we'll have something back by the middle of March, probably, but –

Scott Smith:

It would be good to get some interim work done before then, if we could.

Andrew Ernest:

Well, I was hoping to get – maybe knock something out over this coming week and then circulate it around. I don't know if you want to get the agency involvement at all.

Scott Smith:

I think we need that. I mean, it's not going to – I just – what I'm concerned the most about is that we don't make recommendations that can't be carried out. Or if we want to make the recommendations, that we're fully aware of what process we're trying to kick off.

Lindell Ormsbee:

Well, if we do that, my speculation is that we're not going to have something definitive back by the middle of March, but –

Scott Smith:

It would take that long a period of time to – I mean, we can get Mine Safety and stuff behind us, which should happen this week, and we've just got to think about – we've got the legislature. Yeah, I think we could probably take an hour or so and get those folks together, I mean, just to get some sense of what you want to get done from a policy standpoint.

Lindell Ormsbee:

Are you talking about convening them to speak to us?

Scott Smith:

No, we can – I would say put them together and we start talking about some of this stuff that we had in there. What the possibility – what can we do?

Lindell Ormsbee:

Right.

Scott Smith:

What can be done?

Lindell Ormsbee:

Well, I'm still a little confused. Are you talking about having EQC meeting where these people would be there or just something you all would do internally or –

Scott Smith:

I think it would be an internal work session.

Lindell Ormsbee:

Okay, all right.

Scott Smith:

The results of which could the come –

Lindell Ormsbee:

Get back to us.

Andrew Ernest:

So it would be staff, too?

Scott Smith:

Yeah.

Lindell Ormsbee:

Well, I mean, it could be in March. My concern was trying to load the agenda with too much. I know the staff is going to be working on Earth Day and trying to get everything done. So, I'm just trying to be –

Scott Smith:

Plus the legislature – legislation going through and just keeping an eye on that part.

Lindell Ormsbee:

Exactly.

Scott Smith:

But I'm saying by that April Earth Day meeting, if we could have some interim sessions –

Frances Kirchhoff:

I'm not sure I understand. What kind of interim session are we talking about?

Scott Smith:

I'm saying where we can sit down –

Frances Kirchhoff:

Well, this Board can't meet without public notice, though.

Scott Smith:

It wouldn't be a board meeting. It would be a work session where we – it would be like me coming over – I mean, the Board is not going to make any decision. They're just trying to get information so they can bring stuff to the Board so they can make a decision on it.

Andrew Ernest:

Well, I guess of there was a subcommittee of the commission looking at MTR issues, then does not – that is not a –

Lindell Ormsbee:

Is that not subject to a public meeting notice?

Andrew Ernest:

Yeah. I don't know.

Lindell Ormsbee:

Well, we held our annual meeting and that's, typically, not – do we –

Frances Kirchhoff:

Yeah, I think that if we meet at all, it has –

Scott Smith:

I don't think so. I can have a meeting.

Lindell Ormsbee:

Well, yeah.

Andrew Ernest:

I think that may be –

Scott Smith:

The way to do it?

Andrew Ernest:

Yeah.

Lindell Ormsbee:

But if you have a meeting and maybe some of us stop by or –

Laura Knoth:

Are you talking about an hour in Frankfort?

Scott Smith:

Yeah.

Laura Knoth:

I can do that.

Scott Smith:

I mean, what I'm hearing here, if we can –

Laura Knoth:

With the thinking of what's doable.

Scott Smith:

Yeah. The main thing I – you know, when I saw on some of these proposals the policy issues, I just – the agencies are so hamstrung with federal requirements of what they can and can't do, that we make sure we understand what those constraints are, if there are any, and we can proceed.

Lindell Ormsbee:

So, we can envision having an unofficial meeting that you could convene, maybe some of us could stop by and then finalize a formal recommendation that perhaps we could take action on the April meeting?

Scott Smith:

Yeah. Just, I mean, if there's policy issues that you would like for me to pursue, that would be -- I think we've got to somehow -- you notice that mountaintop is not just mountaintop. It's a myriad of intertwined issues.

Scott Smith:

Some of which are short term, some of which are longer term, some of which are short -- I mean, we just need to focus on what you think is important for us to pursue. For example, flyrock, traffic, water quality. Water quality comes in a number of different flavors, you know, in terms of what it is you're concerned about there.

Laura Knoth:

Right. My flags went up when I was hearing things like: We want to see fertilizer -- new special regs, just because they happen to be using that when they're power seeding the hillside, you know.

Lindell Ormsbee:

Well, I don't think -- we certainly haven't reflected that language in our recommendation.

Laura Knoth:

Right. But I'm just saying, you start targeting and then start pulling out issues to regulate just because it's a mountaintop removal issue, you can change the whole system is my concern. Raise this -- you know, raise a concern about how you regulate something for one industry versus another.

Scott Smith:

Well, we've got a few weeks, certainly, that new board members need to have that information available to them to review as well. So, I mean -- but, I think, you know, I don't have any problem with getting some Surface Mining people, OSM people to come together to answer questions, you know, or to help if there are areas that you wish to pursue with them.

Lindell Ormsbee:

Well, I think we have to have something to start with, and I think Ernest could get to work on this recommendation or resolution here and tweak it a little bit and provide a point of departure, we could then run that up the flagpole and say these are things we are looking at. Are any of these -- is there some statutory restriction that totally precludes us from even doing this even if you wanted to do it?

Scott Smith:

Right.

Lindell Ormsbee:

And clean those -- kind of filter those through.

Scott Smith:

I think we're looking for how do you do it, not why can't you do it.

Andrew Ernest:

Well, if you look at -- even the resolution that we have in front of us, none of that really puts any of the regulatory agencies in any kind of a sticky pickle.

Lindell Ormsbee:

Well, we just ask them for information.

Scott Smith:  
But do we want to put them in – I mean, is there a requirement to put them in a sticky pickle?

Lindell Ormsbee:  
Do we want to add something to that?

Scott Smith:  
I mean, I don't know that there's a requirement to put an agency in a sticky pickle to get something done.

Andrew Ernest:  
No.

Laura Knoth:  
We want to try to avoid that at all costs, in my opinion.

Lindell Ormsbee:  
Well, the question is: If the existing resolution doesn't have that in there, what is the necessity of meeting with the agencies to address issues that don't exist, I guess? Is that a good paraphrase?

Scott Smith:  
Well, depending on what you want to put in there – if it's a policy call on what you want to get done –

Lindell Ormsbee:  
Right, I understand. If we put some type of policy issue that there's a legitimate –

Scott Smith:  
I mean, if you say – we don't want to put – you know, “We don't want to put spoil material in streams.” Period. How do they implement that?

Lindell Ormsbee:  
Right. I don't anticipate that's going to come out of this group.

Scott Smith:  
Right, but I'm just using that as an example.

Lindell Ormsbee:  
Right, right. Well, I would suggest again, Andrew, if you're comfortable with this, is going back and tweaking it a little bit cognizant of what we've just talked about. If there's some policy issue you think there is a consensus on that we maybe should investigate, then we could add that to the list and that could then provide a basis for clarification.

Scott Smith:  
Because, quite frankly, some of those policy things probably do need – you know, even if they can't do them today, we need to find out if OSM, for example – I mean, the whole purpose on that – what other alternative methods are out there and what are their costs?

Lindell Ormsbee:  
Right.

Scott Smith:  
What I'm getting out there is, “Yeah, that's a longer-term thing,” but OSM, they've got money or can get their hands on money to fund some of this futuristic and not –

Andrew Ernest:  
I guess my preference would be to move forward with something like this or even, actually, a little bit more detail, like we had started off with, with the recommendation that the state and federal agencies associated with MTR, or have jurisdiction over MTR, get together and hold hands and sing Kumbaya



on how to do this better. You know, because the – if we start to get into that mode, then it becomes a major, major, long-term kind of things. I think we've got enough information right now to know that something needs to be done. And then truth is, the most effective recommendation we can make at this point is that agencies that are involved with MTR will have jurisdiction over MTR should try and assess or reassess their role in addressing some of the issues that are brought forth in front of us as a group.

Scott Smith:

Yeah. One of the things that, to me, is interesting, is if there are portions, for example, of the Surface Mining Act that could impact this issue – and I'm thinking about one in particular – and that is in that application there's a Statement of Probable Hydrologic Consequences. Now, I don't know today how that's set up in the application and what information is required in order for that to be approved as part of the permit, but in my mind, that's an important part of that application and could have a lot to do with how those fills are constructed so that they minimize or eliminate the impact on stream quality. Now, that's just one aspect that I think I'm particularly interested in that could help – it won't resolve it, but at least we know that the important parts of the existing program is being implemented appropriately. And where it's not, we've – you know, certainly on the flyrock issue, we saw that this summer with some of those incidents and went right back in and amended the statutes to address it, if that's what's necessary. So, I mean, we're more than willing to accommodate what issues are kind of hanging out there that need to be done, and I think there's others that we just need to know how they're being implemented. I mean –

Lindell Ormsbee:

Well, again, some of that can be addressed through the questions that were posed to those different agencies without a necessity of having to walk through this protracted process.

Scott Smith:

Now, one of the – I mean I've been intimately involved in the safety – the writing of these mine safety statutes – that I think we'll see is going to be implemented in one of the statutes – is an ongoing technical commission of some sort that, on a regular basis to meet and talk about how high tech can be implemented in the mining process or not. And this may be something that we might want to take a look at in terms of moving forward with mining because, unless I'm not mistaken, there's no organization that is there on a regular basis to take a look at and ask the question about: How are we doing things and is there a better way to do it? I know the university, once upon a time, used to have a symposium on an annual basis on different – on the surface mining techniques and stuff like that.

Lindell Ormsbee:

That has happened for –

Scott Smith:

For a number of years.

Lindell Ormsbee:

At least over ten years, I think.

Scott Smith:

Right. But, I mean, there's just some – again that's a longer view of life in the mining industry, but it's not one that – I mean there's some of that – we don't want to lose sight of that. I think there's certain things that we can and

should try to get done today and to encourage the agencies to do what they're supposed to do. And then there are some mid-term corrections that could be made and probably funded. But I think, like I said, this is a big, complicated issue.

Andrew Ernest:

Now, the other way to handle this is to have a March meeting and invite the public and state and federal agency reps, hand them the resolution and ask for comment.

Lindell Ormsbee:

But we don't have them attend it. We could get written comments.

Andrew Ernest:

Yeah, we're going to get written comments.

Scott Smith:

I just think we need – if I had a better sense of what, you know, the Commission wanted to address, then we could, you know, in the interim, get some of the answers and give you some information.

Laura Knoth:

Yeah, see, I agree with that because I still don't feel comfortable with what this Commission should be recommending.

--you know, with a resolution to this. I don't want to see us recommending something that the coal industry – we come out looking like we're anti-coal industry or specifically picking on them.

Lindell Ormsbee:

Well, you can argue that we don't want to come out looking like we're pro-coal industry, necessarily, either, I mean.

Laura Knoth:

Well, but you know what I'm saying is, like, I like the idea of this organization – you know, the Commission focusing the big picture, long term. I think that's what the public would want us doing – is thinking: What are they not doing now because of the rules that could be done better in the future? I mean, what you were bringing up there. That's what I would like to see us focus on. Just like on the whole issue of Forestry: The big picture, long-term issue for sustainable forests in this state. Big picture, long-term is the sustainability of coal production in this state, I guess, is my more immediate focus.

Andrew Ernest:

There's no such thing as a sustainable coal industry. The coal industry eventually – coal seams eventually peter out.

Laura Knoth:

Well, for this – you know, for our lifetime. I would just hate to see us, you know, supporting a resolution that you have the entire industry alienated or –

Andrew Ernest:

Well, the first word in our title is “environmental,” not economic, and I think, at some point, you know, we can take a broad enough picture, but at some point we've got to draw the line and say: Well, this is the limit of our scope, and that is environmental and public health type issues. And I think – even the original resolution, the intent of that resolution, in fact the way it came out, was simply protection of the environment and public health.

Lindell Ormsbee:

Public health.

Andrew Ernest:

Yeah. And so I don't think we are – I would be very reluctant to broaden our scope so far that we lose sight of the primary rule here and that is the environmental and public health.

Laura Knoth:

Well, I never saw them as mutually exclusive, but the point I'm making is I don't want to see us come out with a resolution that puts a regulatory agency's, you know, recommending something to them that's not smart, not doable for the big picture.

Andrew Ernest:

But I don't think we have anything in here that is not doable.

Lindell Ormsbee:

I don't think we have that.

Andrew Ernest:

In fact, we're not recommending that they enforce any policy decisions. We are –

Lindell Ormsbee:

And, in fact, Bill said he was fine with the first half of the resolution and the second half as an example. So, he thought all those things that we had at the beginning and end of the resolution, he had no problem with; in fact, endorsed, so –

Lindell Ormsbee:

I don't think that this document, Laura, is somehow bashing the coal industry or anything close to that, personally. And I think. –

Laura Knoth:

I'm just concerned about setting precedents.

Lindell Ormsbee:

Okay. That, basically, is what we do, though. I mean, that's what the Commission has always done.

Laura Knoth:

That we are specifically, you know, singling out one industry or another or one issue or another in this.

Lindell Ormsbee:

But that's how we deal with issues, on an issue-by-issue basis, whether it's dealing with CAFOs or whatever it is. Or TMDLs. We don't take the entire environmental issue on a resolution. We deal with them on a case-by-case basis. I mean, I certainly appreciate your concern, certainly, with regard to precedents for applicability to other industries, such as in Air or whatever, with regard to any specifics we put in there, and that's a point well taken. That's a point well taken. But, I guess –

Laura Knoth:

Well, I'd like to see us have an April meeting. I don't think we'll be anywhere ready for this or anything else by March.

Lindell Ormsbee:

Well, I tend to agree with that. Well, unless – I think, though, we should be able to put something together. Ernest – or Andrew could start. We could circulate that with the new membership, get some feedback. We do have the benefit now of the Minutes from the forum that we held here where we solicited the input from the whole spectrum of individuals. We do have the transcript from the public meeting, and I think, you know, one of the issues

that was raised specifically at the public forum was the issue of flying rock and safety issues. And I think there is a consensus on – I think there are some issues that are pretty uniform as far as consensus issues that we can get at.

Laura Knoth:

Right. I mean I had noted some of those, too. I agree with you.

Gene Zick:

Issue of planting trees – I figured right along that you can't plant the trees on it. It won't grow. Well, now, they're – both of them are agreeing that you can.

Lindell Ormsbee:

I mean that's something we can recommend that, you know, like you said initially, the need and I think a consensus for education and so on with the plan. So, let's see what Andrew comes up with, and that would be my suggestion, and we can then debate on that issue, and if there is a consensus then maybe we can move forward at the April meeting and actually get something out there.

Again, my concern is that we don't lose credibility with the citizens in Eastern Kentucky who are already cynical and have voiced that cynicism at our meeting, that they basically become disengaged from state government, which I think is tragic, but that was certainly the message that we got, that state government does not represent them anymore. And I think that this as a Commission that is supposed to represent all the citizens, that that kind of falls to our responsibilities.

But, anyway –

Andrew Ernest:

We'll shoot for April, then. I will try and knock something up, fine-tune it.

Johnna McHugh:

Are we saying shoot for April to vote after Earth Day, or are we saying have a meeting separately in April?

Lindell Ormsbee:

I would suggest it would probably be more doable if there's a pre-consensus that we just convene a short time afterwards in those.

If we don't have a consensus, then we may have to revisit that issue, but I really don't anticipate that we're going to have a non-consensus on this, though.

Is that all right? And if there are some non-consensus issues, I say we take them off the resolution and we address those later or something with a more in-depth analysis. Is that all right?

Andrew Ernest:

Sure.

With no further business, the meeting adjourned at 4:30 p.m.

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Signed   Lindell Ormsbee, Chair

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Date